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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 6

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIM SPECTOR, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALEY CONNELLY AND FRANK CARLSON, PETITIONERS

v.

UNITED STATES OF AMERICA

No. 7

WILLIAM SCHNEIDERMAN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 8

AL RICHMOND AND PHILIP MARSHALL CONNELLY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 105–139)[1] is reported at 225 F. 2d 146. The opinions of the District Court are reported at 102 F. Supp. 87, 104 F. Supp. 405, 106 F. Supp. 731, 106 F. Supp. 892, and 106 F. Supp. 906.[2]

JURISDICTION

The judgment of the Court of Appeals was entered on March 17, 1955 (R. 140). A petition for rehearing was denied on June 15, 1955 (R. 140). On June 27, 1955, Mr. Justice Frankfurter extended the time for filing petitions for writs of certiorari to August 13, 1955 (R. 141). The petitions for certiorari were filed on August 10, 1955, and were granted on October 17, 1955 (R. 141–142). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether the trial court, in explaining the meaning of "advocacy" of violence in its charge to the jury, properly refused to give an instruction which

[1] "R." will be used herein to refer to that portion of the record which was printed under the supervision of the Clerk of this Court following the issuance of the writs of certiorari. "A." will be used to refer to the selections from the record which were printed as an appendix (in two volumes) to the Government's brief in the Court of Appeals, now on file with this Court. "Tr." will be used, where necessary, to refer to the original transcript of record, which is also on file with this Court.

[2] The District Court opinions—except for the "Appendix" to the last-cited opinion, containing the instructions to the jury (106 F. Supp. at 927–941)—also appear as Appendix B to the petitions for certiorari.

would have explained that meaning in terms of "incitement" to violence, in view of the potentially misleading character of that term as suggesting the urging of immediate violence.

2. Whether the "clear and present danger" test is satisfied.

3. Whether the trial court correctly instructed the jury as to the meaning of "organize" as used in the Smith Act.

4. Whether the evidence is sufficient to support the convictions.

5. Whether the commission of overt acts in furtherance of the conspiracy within the limitations period was adequately proved.

6. Whether petitioners were deprived of a fair trial by the trial court's refusal to grant their motions for a continuance and for a mistrial.

7. Whether petitioner Schneiderman's prosecution was barred by this Court's 1943 decision setting aside his denaturalization.

STATUTES INVOLVED

18 U. S. C. 2385 provided in pertinent part at all times relevant hereto:[28a]

> Whoever knowingly or willfully advocates, abets, advises or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States * * * by force or violence * * *; or
>
> Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the

[28a] See fn. 110, *infra*, p. 92.

duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence * * *; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both * * *.

18 U. S. C. 371 provides in pertinent part:

If two or more persons conspire * * * to commit any offense against the United States, * * * and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * * * *

Sections 2, 3, and 5 of the so-called Smith Act (the Act of June 28, 1940, c. 439, title I, 54 Stat. 670, 671, 18 U. S. C. [1946 ed.] 10, 11, and 13) provided in pertinent part (prior to their repeal and substantial reenactment in codified form as 18 U. S. C. 2385 and 371, *supra*[3]) as follows:

SEC. 2. (a) It shall be unlawful for any person—

(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability,

[3] Effective as of September 1, 1948 (see 62 Stat. 862, 867).

or propriety of overthrowing or destroying any government in the United States by force or violence * * * ;

(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;

(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof.

* * * * *

SEC. 3. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of this title.

* * * * *

SEC. 5. (a) Any person who violates any of the provisions of this title shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than ten years, or both.

* * * * *

STATEMENT

On December 21, 1951, a single-count indictment (R. 1–6) was returned in the United States District Court for the Southern District of California charg-

ing the fourteen petitioners with having conspired to violate the Smith Act[4]—

> * * * by (1) wilfully and knowingly advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruction * * * as speedily as circumstances would permit; and by (2) wilfully and knowingly organizing, and helping to organize, as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruction * * * as speedily as circumstances would permit (R. 2).[5]

A fifteenth defendant named in the indictment, Mary Bernadette Doyle (R. 2), was later granted a severance because of illness. The twelve national leaders of the Communist Party, the conviction of eleven of whom reached this Court in *Dennis* v. *United States,* 341 U. S. 494—William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert

[4] More precisely, it was charged that they conspired "to commit offenses against the United States prohibited by Section 2 of the Smith Act" and 18 U. S. C. 2385, in violation of § 3 of the Smith Act "while said section of said act remained effective," and thereafter in violation of 18 U. S. C. 371 (R. 2). See *supra*, pp. 3–5, including fn. 3.

[5] Two earlier indictments—one naming some of these petitioners as defendants and the other naming the remainder—had previously been dismissed for failure adequately to charge the intent required to be established under the statute. See *United States* v. *Schneiderman*, 102 F. Supp. 87.

G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall[6]—were named as "co-conspirators but not defendants herein" (R. 2). The conspiracy was alleged to have been continuously in effect from "on or about June 28, 1940"[7] to and including the date of the filing of the indictment (R. 1).

Paragraphs 2–8 of the indictment (R. 2–4) charged that it was part of the conspiracy that petitioners and their co-conspirators would become members, officers, and functionaries of the Communist Party, knowing its purposes, and in these capacities assume leadership in the Party and responsibility for carrying out its policies and activities (par. 2); that they would organize groups, clubs, sections, and other units of the Party and would recruit new members, concentrating on the recruitment of persons employed in "key" and "basic" industries (par. 3); that they would publish and circulate books, articles, and newspapers teaching and advocating the duty and necessity of overthrowing the Government of the United States by force and violence as speedily as circumstances would permit (par. 4); that they would write and cause to be written articles and directives in Party publications (par. 5); that they would conduct and cause to be conducted schools and classes in which Party recruits and members would be in-

[6] The twelfth defendant, Foster, was granted a severance for reasons of health, and has not yet been tried.

[7] June 28, 1940, was the date of the enactment of the Smith Act (see *supra*, p. 4).

doctrinated in the principles of "Marxism-Leninism" and in which the duty and necessity of overthrowing the Government of the United States by force and violence as speedily as circumstances would permit would be taught and advocated (par. 6); that they would cause vital parts of the Party to "go underground" "in the event of emergency" and there continue the conspiracy (par. 7); and that they would use false names and documents in order to conceal their identities and activities as Party members and functionaries (par. 8).

Twenty-three overt acts in furtherance of the conspiracy and to effect its objects were alleged (R. 4–6).

Following a trial by jury, petitioners were found guilty (R. 96) and each was sentenced to imprisonment for five years and to pay a fine of $10,000 (R. 103).*

The Government's evidence consisted of the testimony of 22 witnesses, all former members of the Communist Party (including persons who had joined the Party as confidential informants of the Federal Bureau of Investigation), and documentary evidence consisting of books, articles, study-outlines, etc., which set forth the teachings, tenets, and program of action of the Party. Ten of the 14 petitioners—all except Yates, Stack, Carlson, and Schneiderman—rested their cases without putting in any evidence (Tr.

* The trial lasted just under six months, from February 5 to July 31, 1952 (Tr. 236, 13838). The jury reached their verdicts on August 5, 1952, following five days of deliberation (R. 96; Tr. 13865–13873).

10074–10075). The defense of Stack, Carlson, and Schneiderman consisted of brief testimony by two witnesses (Tr. 10752–10780, 10809–10815, 11579–11589), a deposition (Tr. 12108–12135), and a number of exhibits. Petitioner Yates alone testified in her own behalf, she refusing in numerous instances (see *infra*, p. 19, and fn. 17) to answer questions put to her on cross-examination (A. 377–445; Tr. 10159–11885).[9]

On appeal to the Court of Appeals for the Ninth Circuit, the judgments of conviction were affirmed (R. 140).

THE GOVERNMENT'S EVIDENCE

1. *The history and objectives of the Communist Party*

As in the other Communist Smith Act cases which have reached this Court (*Dennis* v. *United States*, 341 U. S. 494; *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922; *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909), the Government introduced voluminous evidence that the Communist Party is a group which advocates the overthrow of the Government by force and violence. In Appendix A, *infra*, pp. 138–147, we set forth in some detail the evidence relating to the origin and the early and recent history of the Party in the United States, including the period of the 1930's and the Young Communist League, the

[9] The Court of Appeals observed in its opinion that "it must be borne in mind that the jury weighed evidence which was in essentials uncontradicted" (R. 125).

San Francisco general strike of 1934, the "Communist Political Association" interlude of 1944–1945, and the reconstitution of the Communist Party in 1945. We also discuss (*infra, pp.* 147–164) the central role of "Marxism-Leninism" in the reconstituted Party and document the fact that force and violence is the fundamental theme in the teachings of Marxism-Leninism.

Appendix A also summarizes (*infra,* pp. 164–170) the evidence as to the organizational structure of the Party and the maintenance of "iron discipline" through the Party principle of "democratic centralism", with particular reference to California (the seat of petitioners' activities). There is likewise collected (*infra,* pp. 170–177) the evidence on the intrinsically clandestine nature of the Party, and its consistent policy of concentrating its forces in "key" or "basic" industries.

This material is, in general, well known to the Court and for that reason we do not collate it in this Statement. But we may point out that the evidence specifically relating to the 14 petitioners can be properly appraised and evaluated only in the light of the mass of evidence as to the history, aims, techniques, activities, and teachings of the Communist Party as a whole. In this connection, we emphasize that, as Appendix A shows in detail, the California branch of the Party, in which petitioners were active, marched right in step with the rest of the Party in this country. See, *e. g.,* Appendix A, *infra,* pp. 139–143, 146, 148, 149–164, 169–170, 173–174, 176.

2. *The specific evidence showing the knowing participation of each individual petitioner in the conspiracy*

What follows is a summary of the specific evidence applicable to each petitioner individually, showing the particular positions of leadership in the Party he or she has held and other grounds giving rise to the legitimate inference that he or she had knowledge of the nature and character of the Party as an organization which advocates and teaches the duty and necessity of overthrowing the Government of the United States by force and violence, together with the intent of causing such overthrow as speedily as circumstances would permit.[10]

Oleta O'Connor Yates.—Petitioner Yates, a former alternate member of the Party's National Committee (Ex. 415, p. 2. [A. 131–132][10a]), has been, since 1950, State Organizational Secretary of the California Party (A. 393), the second highest office in the State organization [11] (A. 6).

During the period 1936–37 (A. 7–8; Tr. 434–437), Yates, a Party member since 1933 (Tr. 10250), in addition to being a delegate to the Party's 1936 National Convention (A. 7), held at various times the Party positions of "educational director" for San Francisco County (*ibid.*), San Francisco "county organizer" (*ibid.*), and member of the governing "District Committee" for "District 13" (A. 8), which formerly in-

[10] Since a specific item of evidence may directly concern two or more petitioners, a certain amount of duplication has been unavoidable, but we have attempted to keep this to a minimum.

[10a] See fn. 1, *infra*, p. 138.

[11] The highest being that of State Chairman, the position occupied by petitioner Schneiderman (see *infra*, p. 60).

cluded all of California as well as several other western states. She was also during this period an instructor at a "state leadership school" conducted by the California State organization (A. 8, 248–249; Tr. 523).

In her lectures at the "leadership school" just referred to, Yates "used as a textbook" (A. 249) the work by "J. Peters" entitled *The Communist Party, a Manual on Organization* (Ex. 61). In a preface to this work (*id.*, pp. 3–7 [Tr. 524–532]) by alleged co-conspirator Jack Stachel, a *Dennis* defendant, Stachel praised it as "embod[ying] * * * the best that is available in the theory and practice of organization in our own Party and the Communist International" and as providing the Party with a "weapon" which "fills a long-felt need" (*id.*, p. 3 [Tr. 525–526]).

"The * * * Aim" of "the Communist Party of the U. S. A.", states the *Manual*, is "the revolutionary overthrow of capitalism", "the establishment of the dictatorship of the proletariat", and "the establishment of a Socialist Soviet Republic in the United States" (*id.*, p. 8 [Tr. 536]). In "the fight" to achieve these objectives, it declares, "[t]he Communist Party is the organized vanguard of the working class,"—"the general staff of the proletariat" (*ibid.* [Tr. 535–536]). One of "the conditions" which must be fulfilled before the "outworn capitalist system [of the United States] can be overthrown", continues the *Manual*, is that "a majority of the class-conscious, thinking, politically active workers" should (*id.*, p. 9 [Tr. 537], quoting Lenin)—

> * * * fully understand the necessity for revolution and be ready to sacrifice their lives for it * * *.

And a second condition is the occurrence of some "governmental crisis" which so "weakens the government" as to make it "possible for the revolutionaries to overthrow it rapidly" (*ibid.*).

"The Soviet Union is the only fatherland of workers all over the world", continues this textbook used by Yates in her lectures (*id.*, p. 16 [Tr. 538]). For this reason, "[t]he Communist Party rallies the masses * * * for the defense of the Soviet Union", and workers the world over "must defend [the Soviet Union] with all their power" (*id.*, pp. 16–17 [Tr. 538]). The *Manual* explains what "the basic industries" are and why it is "of the utmost importance" that the Party "concentrate * * * its forces" in them (*id.*, pp. 47–48 [Tr. 539–540]).[12] It tells "How to Build Shop Units", points out that "the factory" is [t]he stronghold, the fortress of the revolutionary movement", and explains that the "main difference between the Communist Party and the Socialist Party" is that "Socialist Party organizations * * * are built on the basis of bourgeois election wards and districts" (*id.*, p. 48 [Tr. 541]). Defining a "professional revolutionist" as "a highly developed comrade, trained in revolutionary theory and practice", "steeled" and "stable", it declares that

[12] For further details concerning the Party's policy of concentrating its forces in the "basic industries", which the *Manual* defines as "those upon which the whole economic system depends" (Ex. 61, p. 47 [Tr. 539]), see Appendix A, *infra*, pp. 174–177.

it is the "task" of the Party "to make every Party member a professional revolutionist" (*id.*, pp. 112–113 [Tr. 543–544]).

In 1944, Yates was elected as an alternate member of the National Committee of the Party (Ex. 415, p. 2 [A. 131–132]), as well as a regular member of its California State Committee (Ex. 415, p. 3 [A. 126–127]), in addition to being Chairman of its San Francisco County branch (A. 378).

From 1944 to June 1948 (A. 363, 364), witness Daisy Van Dorn was superintendent of the building in San Francisco in which the Communist Party maintained its State and County headquarters, these headquarters being on the seventh floor of the building. (A. 358). In or about November 1944, petitioner Schneiderman asked Mrs. Van Dorn if it would be "possible for the elevator to run evenings" as "he would like to hold a State board meeting" in the seventh-floor offices (*ibid.*). Mrs. Van Dorn, after securing the permission of the owner of the building, agreed with Schneiderman to "run the elevator" herself (A. 358–359). Later in the same week, petitioner Yates similarly requested Mrs. Van Dorn to run the elevator on certain evenings "for her", as she desired to hold night meetings of her "County Board" from time to time (A. 360). Mrs. Van Dorn likewise agreed to accommodate Yates (*ibid.*). Thereafter, until she quit her job in June 1948 (A. 364), Mrs. Van Dorn used to run the elevator "three and four nights a week, sometimes five", transporting persons to and from the seventh floor of the building (A. 359, 361, 366, 367–368, 373, 375). Before Mrs. Van Dorn would

take anyone into the elevator on these occasions, she would make sure that the person's name was on a "list of names" which either Schneiderman or petitioner Lambert, the security chief of the State Party (see *infra*, pp. 33–34), used to supply her (A. 366–367), and she "had to check these people off as [she] allowed them in the elevator" (A. 367).[13] Among the persons whom she used thus to take up in the elevator over this three-and-a-half-year period, in addition to Yates and Schneiderman themselves, were petitioners Lambert (A. 359, 360, 366–367), Fox (A. 366), Dobbs (A. 359), Healey[14] (A. 374–375), Carlson (A. 359, 361), Richmond (A. 367–368), and Connelly (A. 372–374).

Mrs. Van Dorn further testified that, during some or all of this period from November 1944 to June 1948, petitioners Yates, Stack, Lima, Lambert, Carlson, and Schneiderman "had offices" in these seventh-floor headquarters (A. 362–365). And on at least one occasion during this period, in February 1945, Yates taught a class "in Marxism"[15] in these headquarters (A. 368–369).

In April 1945, Yates attended a reception in honor of old-time Party member "Mother" Bloor (A. 369).

[13] During the last three years of her employment in the building, Mrs. Van Dorn herself was a Party member, on a confidential-informant basis (A. 357–358).

[14] Petitioner Dorothy Healey Connelly was referred to throughout the trial as Dorothy Healey, and we shall follow that practice.

[15] Yates testified that "Marxism" and "Marxism-Leninism" have "the same meaning", the latter being a "continuation of" the former "after the death of Marx" (A. 378). For its relevant principles and precepts, see Appendix A, *infra*, pp. 149–164.

The reception was a private affair held at a private home and attended by "not over 50" specially selected Party members, among whom, in addition to Yates, were petitioners Lambert and Schneiderman (A. 369–371). "Mother" Bloor told those present that "the day of the revolution was nigh" and that the "arms" were in readiness (A. 372). Though she was "83 years old", she said, she hoped to "live to see this bloody battle through" (A. 371). She predicted that it would be "a wonderful revolution", with "blood flowing in the streets" (*ibid.*). She urged her listeners to be "good Red Bolshevik[s]" (A. 372) and to "[w]in this country for us" (A. 371). After the reception, when witness Van Dorn, who was one of the guests, told Yates how much she had enjoyed it, Yates, pointing out that "very few were included in that reception", cautioned her to "be quiet about it," to "[k]eep everything to [her]self" (*ibid.*).

In 1946, Yates, in collaboration with petitioner Carlson (A. 387–388), prepared a booklet entitled *A Handbook for Club Officers.* (Ex. MF) (see fn. 123, *infra,* p. 113). Also during 1946 she played a prominent role in the expulsion proceedings against the "left sectarian dissidents" in the California Party (see Appendix A, *infra,* pp. 169–170), these proceedings including the meeting at which (see fn. 49, *infra,* p. 170) petitioner Fox, vehemently denying the chiding remark of member Rosenbaum that the Party was "not a revolutionary party", declared that it "was a revolutionary party" but that the "time * * * for militant action * * * had not arrived yet" (A. 150). (See also *infra,* p. 41).

In November or December 1946, Yates was a speaker at a Party meeting at which petitioners Steinberg, Spector, Kusnitz, Dobbs, and Healey were also present (A. 135–136). She "spoke on the Soviet power, its influence in Burma, in China, Yugoslavia, Czecho-Slovakia, Bulgaria, France, [and] Italy" (A. 136). "[I]t is only through the support of the Soviet [Union]", she said, that it is "possible for Marxism to work and guarantee [a Soviet] type of government," and it is "only through Marxist-Leninist training" that this will be "possible all over the world" (*ibid.*).

In December 1946, Yates contributed an article on *The Struggle Against Deviations and Factionalism in San Francisco* (Ex. 639, pp. 1092–1103 [see A. 157–158, 597–598]) to *Political Affairs,* the Party's official theoretical organ (A. 408). In the article she severely criticized "left sectarianism", despite the "revolutionary phrases" with which it "cloaks itself," because of their unrealizability under "existing conditions" (Ex. 639, p. 1093).

In February 1947, Yates was present, together with petitioners Lima and Lambert, at a Party meeting at which petitioner Schneiderman, criticizing "left sectarians" for being "like the horse that was too far ahead of the cart", assured those present that the Party was "still" a Party of "revolution", but pointed out that, since "revolution means tragedy, * * * violence and bloodshed, * * * sacrifices, the loss of property, the loss * * * of relatives, the loss of our own lives", it was not a thing lightly to be undertaken—"something you can just shrug off or laugh off" (A.

146–147). On the contrary, said Schneiderman, "revolution is serious business," demanding careful preparatory work "among labor, farmers, and minority groups" so as to insure its success when the time to launch it arrives (*ibid.*).[16]

In April 1947, Yates "chaired" a meeting of San Francisco Party club chairmen who "were concentrating on transportation" (Tr. 5458–5459). Between December 1947 and May 1949 (A. 225, 229), in company with petitioners Stack, Lima, Lambert, Fox, Healey, Schneiderman, and Richmond (A. 226–227, 230–231), she attended "[a]t least two dozen" (A. 229) "very secret meetings" (A. 232; see also A. 224–225, 232–233) of the Party's California State Board and San Francisco County Board (A. 225, 228) at the home of witness Bessie Honig in San Francisco (A. 224–234). In the spring of 1949, in her capacity as San Francisco County Chairman, she "open[ed] the press fund drive" for the Party's West Coast newspaper, the *Daily People's World* (A. 235; Tr. 5460–5461).

Also in 1949, in collaboration with petitioner Schneiderman (A. 397), Yates prepared one of the "study outlines" (Ex. 163) used in the "Marxist Institutes" conducted by the Party in California during 1949 and 1950. (See Appendix A, *infra*, pp. 150, 161–164.) These study outlines presented the Marxist-Leninist "classics," including many references to violent revolution. *The Party Review*, a "Preconvention Discussion Bulletin" circulated by the California

[16] For further details of this speech of Schneiderman's, see *infra*, pp. 64–65.

Party in 1950 (Ex. 181 [see A. 579]), announced that the State Committee had "set up a special committee" composed of Yates, petitioner Richmond, and one other "to help develop the pre-convention discussion" (*id.*, p. 1).

As of the time of the trial, Yates, in addition to being a member of the California State Committee (A. 418), occupied the second position in the California organization (see *supra*, p. 11). The only one of the defendants to take the witness stand (A. 377–445), she refused to submit to effective cross-examination by declining to answer many pertinent questions relating to the charges of the indictment (e. g., A. 416, 417, 418, 419, 420).[17]

Henry Steinberg.—Petitioner Steinberg, who in recent years has been active as a Party "educational director" (A. 138–139) and "practical politician" (A. 248), has been associated with the Party since at least as early as 1936, when witness Rosser met him in company with petitioners Dobbs and Carlson at a meeting of the Los Angeles leaders of the Young Communist League, the Party's youth unit (A. 247). See Appendix A, *infra*, pp. 139–140. This witness again met Steinberg at a "county committee meeting" of the Los Angeles County Communist Party held in June or July of 1940 (A. 247). The purpose of this meeting, which was also attended by petitioner Connelly (*ibid.*), was to discuss the Party's campaign

[17] For these refusals, she was held guilty of and sentenced for contempt of court. See *Yates* v. *United States*, 227 F. 2d 851 (C. A. 9), pending on certiorari, No. 15, and being argued as a companion case.

strategy in the forthcoming Presidential election (A. 248). Among the topics discussed were "the slogans" which the Party was to use in the campaign, including the slogan "Don't support the imperialist war; vote Communist" (*ibid.*).[18] In the ensuing election Steinberg was the Party's nominee for the office of State Assemblyman (Ex. 516 [A. 454]; Ex. 557 [A. 458]).

In November 1942, Steinberg attended a meeting of the Party's Los Angeles County Committee at which various decisions were taken with respect to the Party's training schools in that county (A. 256–257). The Committee heard a report from the "head of the schools" on such questions as who was to teach "Leninism No. 1", who "was going to handle Leninism 2,"[19] who "was going to lecture on the * * *

[18] From August 1939 to June 1941, the period of the German-Soviet Non-Aggression Pact, World War II was characterized by the Party as an "imperialist" and hence as an "unjust" war (A. 274, 275, 495, 572, 592, 594, 602). "Imperialist" wars, according to Communist teaching, should be turned into "civil" wars, having as their objective "the defeat of one's own government" (A. 494). When, however, the Soviet Union was invaded by Germany in June 1941, "the character of the war changed" (A. 274, 256). It suddenly became "a just war", "a war against fascism" (A. 274). And the Party's National Committee, following a hastily convened "Plenary Meeting", issued an urgent "Manifesto" calling on "the people of the United States" to support the "glorious and mighty defense by the Red Army" and the "valiant struggle" of the "peoples of the Soviet Union" to "crush the aggressor" and "assure the complete and final annihilation of Hitler and Hitlerism" (A. 255–256).

[19] "Leninism", like "Marxism", is a shortened form of "Marxism-Leninism." (see A. 378). For its pertinent teachings, see Appendix A, *infra*, pp. 149–164.

war against fascism, and so forth" (A. 257). Later in the meeting the Committee members discussed the question of which students should "go to the school", it being the Committee's responsibility to decide which of the local Party members "active in [Party] leadership" should attend "this basic training school" (A. 257–258).

By December 1946 or January 1947 Steinberg himself had advanced to the position of Party "educational director" for Los Angeles County (A. 138–139).[20]

In November or December 1946, Steinberg was present, together with petitioners Yates, Spector, Kusnitz, Dobbs, and Healey, at the previously-mentioned (see *supra*, p. 17) Party meeting at which Yates "spoke on the Soviet power" and described what would be needed to achieve a "Soviet * * * type of government" "all over the world" (A. 135–136).

In January 1949, Steinberg was Chairman of, and "made several speeches" at, a "Lenin Memorial Meeting" sponsored by the Party's "Education Department" for Los Angeles County honoring the "25th anniversary of the death of V. I. Lenin, chief founder of the Soviet Union" (A. 207–210; Ex. 737). The principal speaker at this "Lenin Rally", which was intended to "serve primarily as a protest against" the then-pending *Dennis* trial (Ex. 737 [A. 209]), was petitioner Dobbs (A. 210–211).

[20] For a summary of pertinent teachings of the Party in its California schools during this period, see Appendix A, *infra*, pp. 151–161.

In May 1949, Steinberg accompanied petitioner Schneiderman, the Party's State head (see *infra*, p. 60), on a trip to San Diego (A. 30), where Schneiderman "made a talk on behalf of" the Party's twelve indicted leaders (A. 29). In the spring of 1950, he was present with petitioner Healey among others at a "circulation drive" for the *Daily People's World* (A. 95–96), the Party's West Coast newspaper (see *infra*, pp. 110–112). In May 1950, he was advertised as a speaker at a May Day "mass meeting" sponsored by the Los Angeles Party's "Educational Committee" (Ex. 358; Tr. 2828). And in the summer of 1950, while running for election to the Los Angeles "Board of Education" (A. 99), he attended and spoke at a "closed" Party meeting admittance to which required that one "face a panel" (A. 98).[21]

Loretta Starvus Stack.—Petitioner Stack, an active Communist since the early 1930's (A. 213–215) and in recent years a member of the California State Committee (A. 418), has long been one of the top-echelon leaders in the State organization. Prior to petitioner Yates' succession to the office in 1950 (A. 114, 393), she occupied the California Party's second-ranking position (A. 6)—that of State Organizational Secretary (A. 106, 238; Ex. 315, p. 1).

[21] In October 1950, the Los Angeles Party sponsored an "election rally" at which Steinberg was a principal speaker (Ex. 359; Tr. 2844–2847). While the record does not reflect what he said in his speech, the tone of the rally may be inferred from the printed leaflets advertising it. They charged among other things that "profit-mad warmongers" in the United States were thwarting the Soviet Union's great desire for peace, and that the policies of the "Warren-Nixon-Gianinni gang" were open[ly] pro-fascist" (Ex. 359).

Stack, at that time known as "Lottie Keith" (A. 213–214), was one of a group of Young Communist League members who attended the "International Lenin School" in Moscow in 1932 (A. 214–216). Prior to their departure for the Soviet Union, she and her fellow students received instructions, with respect to their forthcoming trip, from witness Patterson at the League's national headquarters in New York (A. 215).[22] Patterson, at the time a self-described "professional revolutionist" (A. 220) who had just returned from Russia himself on a similar mission (A. 216–218), spoke to the group on behalf of the League's National Committee after being introduced by alleged co-conspirator Gilbert Green, the League's Secretary (A. 215) and more recently a defendant in the *Dennis* trial.

In 1934, following her return to this country, Stack related to Patterson some of the things she had been taught at the Lenin School (A. 215–216).[23] Among other things, she said, she had been instructed in the art of waging a successful revolution; this included instructions in such subjects as the use of the bayonet (A. 223) and various techniques of "street fighting" (A. 216). In "street fighting", she was taught, anything that could serve to "protect the revolutionaries in their fighting", such as "automobiles", "street-

[22] The evidence relating to this briefing session was offered by the prosecution only as against Stack (Tr. 5360).

[23] This conversation, which likewise (see fn. 22) was offered in evidence only as against Stack (Tr. 5366), took place in Philadelphia at the local district office of the Young Communist League (A. 216), of which Stack was at the time a member of the District Committee (Tr. 5386).

cars", "buses", and the like, were to be used as "barricades," and the revolutionists were to "disregard human life or anything else" in achieving their objective (A. 216–217). She was further taught that the Party in "the United States" should "try to stay legal as long as [it] could", but that in the event of "an attempt on the part of the American Government to drive the party underground" it would be "the duty of the students" to "prepare the party apparatus * * * for illegal work" in order that it might remain "intact * * * and function right along" (A. 217). She "had learned a lot from that teaching", she told Patterson, and she believed it desirable that the Party take immediate steps to "put this into practice" (A. 218). In her "class on the dictatorship of the proletariat", she said, she was taught that (A. 218–219)—

> * * * the dictatorship of the proletariat could only * * * come about as a result of the overthrow of the Government in the respective countries; and that it was the duty of the students of their respective countries to work to overthrow their own government and to set up the dictatorship of the proletariat as a guarantee that the government that was overthrown would not regain its power.[24]

Some time following this conversation Stack became active in Party circles in the California area. Between 1936 and 1949, witness Lautner saw her "many

[24] *Cf.* the Party's teachings in its post-World War II schools and classes in California concerning the nature of the "dictatorship of the proletariat" and its proposed function in this country (Appendix A, *infra*, pp. 151–154, 155–157).

times at plenums"—*i. e.*, plenary sessions (A. 43)—of the Party's National Committee (A. 72). In 1945, she was a member of the California delegation to the National Convention which reconstituted the Party following the interlude of the "Communist Political Association" (A. 72–73) (see Appendix A, *infra*, pp. 145–147), and in August of that year she was elected at the Party's California State Convention to membership on the State Board (A. 124–125, 130; Ex. 398). In her speech accepting this position she urged that "Marxist-Leninist rules" be "reinstitute[d]," and she predicted that "the American workers [would] be the grave diggers of the capitalistic government"[25] (A. 130).

From the end of 1945 until at least as recently as May 1948, when she became ill, Stack, together with petitioners Yates, Lima, Lambert, Carlson, and Schneiderman, "ha[d] a desk" at the Party's State headquarters in San Francisco (A. 362–365). At a 1946 Party convention, she made a speech in which she said that "we"—referring to the Party (A. 29–30)—

> * * * are the instrument through which this capitalist government will be overthrown * * * and a socialist form set up.

By the spring of 1947 she had advanced to the California Party's second highest office (A. 6)—that of State Organizational Secretary (A. 238). Between

[25] *Cf.* the passage in the *Communist Manifesto* to the effect that "What the bourgeoisie therefore produces, above all, are its own grave-diggers. Its fall and the victory of the proletariat are equally inevitable" (Ex. 39, p. 21).

December 1947 and May 1949 (A. 225, 229), she was a regular attendant, together with petitioners Yates, Lima, Lambert, Fox, Healey, Schneiderman, and Richmond (A. 226–227, 230–231), at "[a]t least two dozen" (A. 225, 229) "very secret meetings" (A. 232; see also A. 224–225, 231–233) of the Party's California State Board and San Francisco County Board (A. 225, 228) held at the home of witness Bessie Honig in San Francisco (A. 224–234). In August 1948, she contributed an article entitled *Major Problems in Party Building* to the California Party's *State Convention Report* (Ex. 186 [see A. 580–581], p. 3). In her article, after referring to the fact that the Party had been "reconstitute[d]" from its "revisionist period" to the Marxist-Leninist concept of a Party which would "function as the vanguard of the working class",[26] she urged renewed emphasis on the Party's "industrial concentration policy" as a prerequisite to the achievement of its "political objectives" (*ibid.*).[27]

In October 1948, as State Organizational Secretary, she spoke to a group of Party members on the Party role of "the women" (A. 105–107, 118–119). The Party, she said, should occupy the place of "highest * * * importance in a person's life" (A. 106–107). In this connection she (A. 118)—

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[26] For the nature of the enterprise in which the Communist Party is to be, in Marxist-Leninist parlance, the "vanguard of the working class", see *supra*, p. 12, and Appendix A, *infra*, pp. 155–158.

[27] For details concerning the Party's policy of concentrating its forces in the so-called "key" or "basic" industries, the nature of such industries, and the reasons for the policy, see Appendix A, *infra*, pp. 174–177.

> * * * made reference to the historic role that the women played in bringing about the Russian revolution, and she made mention of the fact that women of today * * * must take the same historic role * * * in bringing about * * * this revolution, the overthrowing of the present existing economic system, not in part, but in its entirety.

"[T]o reach our aim", she said, it would be necessary for women to "take up * * * arms side by side with men" (A. 119).

Frank Efroim Spector:—Petitioner Spector, a "[p]ioneer [l]eader of the Communist Party in Los Angeles",[28] has been an active member of the Party, principally in the California area, since the early 1930's (A. 243–244; Tr. 7685–7688), his activities including that of Party "organizer" at various levels (A. 12, 293) and teacher of Marxism-Leninism in Party schools (A. 297, 307–308). As of May 1950, he was the Division Organizer of the Southern Division of Los Angeles County (A. 292–293).

In 1936, Spector used to attend, together with petitioners Lambert, Dobbs, Healey, Carlson, and Schneiderman, "underground meetings", held in "trusted members' homes", of the Los Angeles County Committee of the Young Communist League (A. 262–264). These meetings were, as witness Rosser put it, "so hid that you couldn't get to them unless you were invited and taken there", the reason for these precau-

[28] Spector was so described in *Two Decades of Progress, 1919–1939* (Ex. 611 [at p. 16]), a publication put out in 1939 by the Los Angeles Party.

tions being that the League "was a secret organization underground conspiring at that time" (A. 264).[29] Also in or about 1936, Spector became the Party's "county organizer" for San Francisco County (A. 12), and in 1937 (Tr. 447, 451) he was present at a "District 13" (see *supra,* pp. 11–12; Appendix A, *infra,* p. 165) Committee meeting at which Party leader Schneiderman sought to determine how a certain "Trotskyite article" had managed to get "past the party members" on the staff of the *Western Worker* (see *infra,* pp. 110–112) and find its way "into the pages of the party press" (Tr. 450). In 1940 or 1941, following a decision by the Party's National Committee that non-citizens were not to be permitted to remain in the Party at that time (A. 45; Tr. 2039–2042), Spector, a non-citizen, stated that as "a proletarian" he would "fight for his right to remain a member of the Communist Party" (A. 45–46).

In November or December 1946, Spector was among those present—others including petitioners Steinberg, Kusnitz, Dobbs, and Healey—at the previously-mentioned (see *supra,* p. 17) speech of petitioner Yates concerning the necessity of "Soviet * * * support" and "Marxist-Leninist training" as means to the bringing about of the "Soviet * * * type of government" "all over the world" (A. 135–136).

In December 1946, Spector "conducted classes" for Party members in Hollywood, California (A. 307).

[29] Rosser further testified that it was at meetings such as these, as distinguished from open meetings, held "in a big hall", that "the strategy and tactics of the party" were "worked out" (A. 263).

Among the books which he used in his lectures was Stalin's *Foundations of Leninism* (Ex. 1) (A. 307–308). Witness Russell, at that time a club "educational director" (A. 312), was one of Spector's pupils (A. 307). Russell recalled particular passages from this Marxist-Leninist classic to which Spector had directed his pupils' attention (Tr. 6867, 6869). In one of these, Stalin defines "Leninism" as (Ex. 1, p. 10 [Tr. 6870])—

> * * * the theory and tactics of the proletarian revolution in general, the theory and tactics of the dictatorship of the proletariat in particular.[30]

In another, Stalin explains why "the revolution in Russia could not but * * * assume an international character" (Ex. 1, p. 17 [Tr. 6883]). "[T]he whole situation", says Stalin, "impelled" the successful Russian revolutionists (*id.*, pp. 17–18 [Tr. 6884])—

> * * * to transfer the struggle to the international arena, * * * and to forge a new fighting weapon for the proletariat * * * [in its] task of overthrowing capitalism * * * [in] all countries.

Spector also required his students to read chapter VIII of this same work of Stalin's, entitled "The Party" (*id.*, pp. 107–124), in its entirety (A. 307–308). In that chapter the author refers with withering contempt to Kautsky's defense of the so-called

[30] *Cf.* the treatment of these subjects in the study-outlines used as guides for the teacher in the Party's state-wide schools and classes which it conducted during this period (Appendix A, *infra*, pp. 151–161).

"Second International" (Ex. 1, p. 107). "Kautsky says that the parties of the Second International are instruments of peace and not of war", observes Stalin, "and that for this very reason they were powerless to take any important steps * * * during the period of revolutionary action by the proletariat" (*ibid.*). "[Q]uite true", agrees Stalin, but all that Kautsky has succeeded in proving by this statement, he says, is that (*ibid.*)—

> * * * the parties of the Second International are unfit for the revolutionary struggle of the proletariat, that they are not militant parties * * * but election machines adapted for parliamentary elections and parliamentary struggle.

Some nine months later, in September 1947, Spector's pupil Russell was suspected by the Party of being a "police spy", and Spector was one of a group of three Party officials who interrogated him about the matter (A. 310–312). Spector asked Russell in the course of his cross-examination "what Marxist reading [he] had done" (A. 311). When Russell replied (*ibid.*) that he had read the *Communist Manifesto* of Marx and Engels (Ex. 39); two other works by Marx; Stalin's *Foundations of Leninism* (Ex. 1) and *Mastering Bolshevism*, and "the first half of" the *History of the Communist Party of the Soviet Union* (Ex. 28), Spector remarked that this was "a remarkably small amount of reading for the educational director of a club" to have done, that "a person in a

position of such responsibility ought to be very widely read in the basic works of Marxism-Leninism in order to interpret them to the club members"[31] (A. 312).

In May or June 1949, the regular instructor at a Party "leadership training school" announced to the class at one of its sessions that Spector was to be their instructor at the next session, that his "topic" was to be "the state", and that the class was "sure fortunate in having an instructor so well informed on this topic" (A. 297).[32]

Albert Jason Lima.—Petitioner Lima has in recent years been one of the top officials of the Communist Party of California, having served, contemporaneously with such other Party leaders as petitioner Schneiderman (the ranking California official) and most of the defendants in the *Dennis* case, on the Party's National Committee (Ex. 650 [A. 598]; Exs. 407, EA). Active in the California area since at least 1940 (Ex. 544 [A. 455]; Ex. 520 [A. 458]; Ex. 528 [A. 452]), he has held, at various times between 1946 and the trial of this case, in addition to his membership on the National Committee, such offices as Chairman of the Party's "East Bay Region", consisting of Contra Costa and Alameda Counties (A. 109–110), "Secretary" (Exs. 561 and 569 [A. 447]) and "Field

[31] For pertinent selections from some of these "basic works of Marxism-Leninism", with which it is reasonable to infer from this remark of Spector's that he was familiar, see Appendix A, *infra*, pp. 151–163.

[32] For a summary of the teachings of Marxism-Leninism on "the state", see Appendix A, *infra*, pp. 151–154.

Organizer"[33] of the California Party (Ex. 315, p. 1; A. 12), and "Assistant State Organizational Secretary"[34] (Ex. EA).

From the end of 1945 to at least as recently as June 1948, Lima, together with petitioners Yates, Stack, Lambert, Carlson, and Schneiderman, "ha[d] a desk" at the California Party's San Francisco headquarters (A. 362–365). In May or June 1946, he participated, together with petitioners Yates, Lambert, and Schneiderman, in the already referred-to (see *supra*, p. 16, and Appendix A, *infra*, pp. 169–170) expulsion proceedings against the Party's "left sectarian dissidents" accused of "anti-Party activity" for failing to follow the Party line with respect to the 1945–46 "machinist strike" (A. 151–153). In February 1947, he was present, together with petitioners Yates and Lambert, at the Party meeting which has previously been mentioned (*supra*, pp. 17–18), and which is described more fully at pp. 64–65, *infra*, at which petitioner Schneiderman emphasized that the Party was "still" a Party of "revolution" and pointed out that, for the very reason that "revolution is serious business"—entailing "violence and bloodshed" and "loss of * * * lives"—it demands great care in preparing for it so as to insure its success (A. 146–147).

[33] A State Party letterhead in use in 1948 (Tr. 6717) lists the office of "Field Organizer", with Lima as incumbent, as the third-ranking office in the State organization, preceded only by those of State Chairman and State Organizational Secretary (Ex. 315, p. 1).

[34] The office of State Organizational Secretary is the second highest position in the State Party, being exceeded in rank only by that of State Chairman (Appendix A, *infra*, p. 166, and see fn. 33, *supra*).

Between December 1947 and May 1949 (A. 225, 229), Lima attended, together with petitioners Yates, Stack, Lambert, Fox, Healey, Schneiderman, and Richmond (A. 226–227, 230–231), "[a]t least two dozen" (A. 229) "very secret meetings" (A. 232; see also A. 224–225, 232–233) of the Party's California State Board and San Francisco County Board (A. 225, 228) at the home of witness Bessie Honig in San Francisco (A. 224–234). In December 1950, he was present at and, together with petitioner Richmond, spoke to the Party's "West Oakland convention" in Berkeley (A. 110–112; Tr. 3562). The attendants at this convention, in order to safeguard the secrecy of its location, adopted such precautionary measures as assembling in advance, leaving for the convention hall in groups of three at three-minute intervals, and "park[ing] at least two blocks from the * * * hall" (A. 111). At that time "the whole [West Oakland] section" had recently "under[gone] a change", the constituent "clubs" having all been "dissolved and reorganized into groups" of "[n]ot more than five" persons to a group (A. 110).[35] Similar precautionary measures were taken the following month in connection with the East Bay "regional convention", which Lima, in his capacity as Chairman of the East Bay Region, also addressed (A. 112–113).

Carl Rude Lambert:—Petitioner Lambert has for many years been the Party's "security head" for

[35] For the reasons for this dissolution of the clubs and their reorganization into smaller groups known as "squads", see Appendix A, *infra*, pp. 170–174.

California (A. 235, 28, 152, 327). As such, he has been "the one responsible for the security of the party" (A. 250)—a responsibility he appears to have borne since 1935 (A. 249–250). He has in addition been a regular attendant at meetings of the State Board, including those held in the greatest secrecy, presumably as a member of that body (A. 224–234, 358–360), and he has also held, since 1939 or earlier, either intermittently or continuously, the office of Party "Financial Secretary" for the state (Ex. 574 [A. 446]; Ex. 572 [A. 446]; Ex. 564 [A. 447–448]; Ex. 582 [A. 449–450]).

In 1936, Lambert was one of the group of Party members (which [see *supra,* pp. 27–28] included also petitioners Spector, Dobbs, Healey, Carlson, and Schneiderman) who used to attend "underground meetings" of the Los Angeles County Committee of the Young Communist League in the "private homes" of "trusted members" in Los Angeles—the meetings which, because the League "was a secret organization underground conspiring at that time", were "so hid that you couldn't get to them unless you were invited and taken there" (A. 262–264). From 1944 to 1948, he was one of the previously-mentioned (see *supra,* pp. 14–15) group of Party members—others including petitioners Yates, Fox, Dobbs, Healey, Carlson, Schneiderman, Richmond, and Connelly—whom witness Van Dorn, pursuant to the requests of Schneiderman and Yates that she run the elevator for them on meeting-nights of the State and County Boards, used to take up to the Party's seventh-floor San Francisco

headquarters.[36] He also was one of the select group of Party officials—others including petitioners Yates and Schneiderman—who in April 1945 attended the already-described (see *supra*, pp. 15–16) "Mother" Bloor reception at which "Mother" Bloor spoke with feeling of what she believed to be the near approach of "the day of the revolution" and the "bloody battle" (A. 369, 371–372).

In May or June 1946, Lambert was present, together with petitioners Yates, Lima, and Schneiderman, at the expulsion proceedings against the "left sectarian dissidents" who failed to follow Party orders in the 1945–46 "machinist strike" (A. 151–153; see Appendix A, *infra*, pp. 169–170). As "head of the security committee of the party", Lambert "spoke out against these persons", one of whom was his own brother (A. 151, 153), "and accused them of anti-party activity" (A. 152). He was likewise present (see Appendix A, *infra*, p. 170), together with petitioner Yates, at the subsequent expulsion proceedings against Party member Rosenbaum at which petitioner Fox, denying Rosenbaum's taunting charge that the Party was "not a revolutionary party", affirmed that it "was a revolutionary party" but that the time was not yet ripe for "militant action."[37] And he was also present, together with pe-

[36] Lambert, moreover, was one of the two petitioners (the other being Schneiderman) who, as previously noted (see *supra*, pp. 14–15), used to supply Mrs. Van Dorn with check lists which she used to guard against uninvited or unaccredited individuals being received into the elevator.

[37] A more detailed account of Fox's speech on this occasion appears at p. 41, *infra*.

titioners Yates and Lima, at the Party meeting in February 1947 (see *supra;* pp. 17–18), described more fully at pp. 64–65, *infra,* at which petitioner Schneiderman declared that the Party was "still" a Party of "revolution".

In the spring of 1947, Lambert, as "head of our security", addressed a Party meeting "on the subject of security within our party" (A. 235–236). He read to the members documented "histories of people that had been expelled from the party" (A. 236–237), told them how to "protect themselves from the FBI", and warned them "not to use names or places on the phone" (A. 237). He explained how "to talk around [a] subject in code" and he cautioned them in particular not to use a telephone in the same room in which a meeting was being held, or, if this was unavoidable, at least "to cover it with pillows" (A. 237–238).

In March 1948, he was present (A. 187–188), together with petitioners Healey and Carlson (A. 186, 187), at a Party "functionary meeting" (A. 186) at which petitioner Dobbs made a speech, described more fully at p. 48, *infra,* in which he likened the role of the *Daily People's World,* the Party's West Coast newspaper (see *infra,* pp. 110–112), to that of *Pravda,* the organ of the Russian Bolshevik Party, in the pre-Revolutionary period in that country (A. 190–191).

In July 1950, in his capacity as "chairman of the State Security Board", Lambert was present at a Party meeting in connection with an expulsion-recommendation which had been made by the State Board against witness Sutherland (A. 327–328). Lambert

stated to those in attendance that the leadership of the Party was "purging the party" for "emergency or revolution" (A. 328). In reply to a member's question as to "[h]ow soon" the Party was "expecting a revolution", another member, one Alexander, said that "[t]he European crisis may decide that"[38] (A. 329). Lambert added that "the Korean crisis", too, might precipitate the revolution, and he remarked that if American "aggression continue[d]" in Korea "anything [might] be expected" (*ibid.*). In reply to a question from Sutherland as to whether the Party was "really planning revolution by bullets", Alexander replied, in Lambert's presence, "Just what the hell do you think we are purging the party for?" (*ibid.*).

Rose Chernin Kusnitz.—Petitioner Kusnitz, who is frequently referred to in the record as "Rose Chernin", has been an active Party leader in California since 1946, her most recent position reflected by the record being that of Organizational Secretary of the Midtown Division[39] of Los Angeles County (A. 356). Previously to 1946, her Party activities were in the New York area (A. 45, 317–318).

In April 1943, Kusnitz was Section Organizer[40] of the Party's Bronx Section in New York City (A. 317–

[38] *Cf.* the statement in Peters' *Manual on Organization* (Ex. 61) concerning the necessity of some "governmental crisis" as a condition precedent to a successful revolution (*supra*, p. 13).

[39] For the place of the "division" in the Party's organizational structure, see Appendix A, *infra*, p. 166. The office of Organizational Secretary in a Party unit is next below that of Chairman (*cf.* A. 6).

[40] The "Organizer" of a Party unit is the highest executive official of the unit. See Appendix A, *infra*, p. 166.

318). In a speech which she made at a 1943 Party meeting she emphasized the importance of new recruiting of Party members and pointed out further that, as a consequence of "the men['s]" having to enter the armed forces, it was incumbent on "the women" to assume more active Party roles (A. 318). Thereafter, in the summer of 1945, she attended the Party's New York State Convention of that year (A. 45).

Beginning some time in or about 1946, Kusnitz's Party activities shifted to California. In November of that year, she and petitioner Dobbs were among those in attendance at a Party function in Los Angeles (A. 133–134) at which petitioner Schneiderman, declaring that "free elections in this country can only serve the purposes of the fascists", appealed for, among other things, "immediate cessation of aid to Chiang-Kai-Shek", the "demobilizing of all United States armed forces", the "removal of all * * * American labels from relief goods", and the immediate adoption of "Marxist training" (A. 135). In the same or the following month, she was present, together with petitioners Steinberg, Spector, Dobbs, and Healey, at the previously-mentioned (see *supra*, p. 17) Party meeting at which petitioner Yates "spoke on the Soviet power" and of the necessity of "Soviet * * * support" and "Marxist-Leninist training" as means to the bringing about of the "Soviet * * * type of government" "all over the world" (A. 135–136).

In June 1948, Kusnitz held the office of "Organizational Secretary, 66nd [*sic*] A. D. [Assembly Dis-

trict], Los Angeles" (Ex. 182, p. 1 [A. 581]), this being a "section" of the Los Angeles County Party[41] (*id.*, p. 2 [A. 582]). In her capacity as such, she contributed an article entitled *Party Building and the Fight for Negro Rights* to a publication of the Party's California State Committee entitled *Pre-Convention Discussion Bulletin No. 2* (*id.*, pp. 1–2 [A. 581–582]).[42] The article referred among other things to the Party's "revisionist period" (see Appendix A, *infra*, pp. 144–147); "the Taft-Hartley Slave Bill"; "police terror against the community", which it described as "an every day occurrence" in Kusnitz's section; the "regrouping of our clubs into smaller units";[43] a "six session leadership training seminar" which Kusnitz' section had recently conducted "[i]n order to solve the leadership problem for our smaller clubs"; the fact that "[o]ur section [had] surpassed all other county sections" in a campaign to obtain new subscriptions to the *Daily People's World*, the Party's West Coast newspaper; and a new-recruit "quota" which her section had set for itself in the "Party Building drive" (*ibid.*).

Some time thereafter Kusnitz became Section Organizer—*i. e.*, the leader—of the "West Jefferson Section" of Los Angeles County (A. 356). In August

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[41] For the place of the "section" in the Party's organizational structure, see Appendix A, *infra*, p. 166.

[42] Kusnitz's article shared the front page of this eight-page publication with one by William Z. Foster, the Party's National Chairman.

[43] For the reasons behind this break-up of Party clubs into smaller groups known as "squads", see Appendix A, *infra*, pp. 170–174.

or September 1949, she told witness Brandt that she was leaving this position in order to assume the office of "organizational secretary" of the County's "Midtown Division"[44] (*ibid.*). Within a month or two thereafter (see Ex. 204, p. 1), the so-called "Marxist Institutes" commenced to hold their sessions in Los Angeles County (as well as elsewhere in California). Of thirteen Institute schools established for Los Angeles County, three were scheduled to operate in Kusnitz's Division (Ex. 204, p. 2).[45]

Ernest Otto Fox.—Petitioner Fox, an active Party member in California and the State of Washington since at least 1935 (A. 10, 249), has in recent years been the Party's San Francisco "Maritime Section Organizer" (Ex. 177, p. 3 [A. 579]; Ex. 181, p. 2 [A. 579]).

From 1944 to 1948, Fox was one of the group of Party members—others including petitioners Yates, Lambert, Dobbs, Healey, Carlson, Schneiderman, Richmond, and Connelly—whom witness Van Dorn used to transport by elevator, after checking their names from a check list, to the Party's seventh-floor headquarters in San Francisco on meeting-nights of the California State and San Francisco County Boards. See *supra*, pp. 14–15. Mrs. Van Dorn took Fox up in the elevator, she testified, on some "80 or 100" such occasions (A. 366).

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[44] One of five "Divisions" into which Los Angeles County was divided (Ex. 204, p. 2).

[45] For the pertinent content of the curricula of the "Marxist Institutes", see Appendix A, *infra*, pp. 161–164.

In or about October 1946, Fox was present, together with petitioners Yates and Lambert among others (see *supra*, p. 35), at the expulsion proceedings against Party member Rosenbaum (A. 148–150). Rosenbaum was charged with having "associat[ed] with" certain recently expelled Party members known as "left sectarian dissidents".[46] In the course of Rosenbaum's "fervent * * * defense of himself" as "a better Marxist than anyone present", he taunted his accusers with the charge that the Party "was still" under the influence of "the Browder policies"[47] and that it was "not a revolutionary party" (A. 150). Fox angrily replied that the Party "was a revolutionary party" but that it was "not going to stick its neck out" prematurely and thus risk "getting its head chopped off" (*ibid.*). He added that he himself (*ibid.*)—

> * * * wanted to see the overthrow of this lousy system just as much as anybody else present, but there was a time and place for militant action and it had not arrived yet.

During 1947 and 1948, Fox was Chairman of the "Joe Galdo club"[48] (A. 283, 285), as well as of the

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[46] For the meaning of "left sectarianism", see pp. 64–65, *infra*, and Appendix A, *infra*, p. 169.

[47] See Appendix A, *infra*, pp. 144–147.

[48] Fox's succession to the chairmanship of this club was the consequence of a reversal by "the [San Francisco] county" leadership of an earlier decision by the club executive board not to name him to that position lest it "endanger [his] citizenship status" (A. 285). "[T]he county", overruling the executive board, "stated that Ernest Fox would be chairman", which settled the matter (*ibid.*). *Cf.* the discussion at Appendix A, *infra*, pp. 168–170, of the Party principle of "democratic centralism".

"warehouse branch" of the San Francisco County Party (Tr. 4394–4395). During the first seven months of 1948, he was present, together with petitioners Yates, Stack, Lima, Lambert, Schneiderman, and Richmond, at at least one of the "very secret meetings" of the Party's California State Board at the home of witness Bessie Honig in San Francisco (A. 230–231) (*supra;* p. 18). In the summer of 1948, a visitor at Fox's apartment observed there "a whole set" of the "[Little] Lenin Library",[49] which Fox had received as a present, he said, while a delegate to a Party convention (A. 289). Also in the summer of 1948, Fox was instrumental in the organization of, and thereafter became Chairman of, what was known as the "Haskell [S]ection" of the Party (A. 283, 284), the creation of which, he said, was necessary in the interests of "better Communist Party organization" (A. 284). In August 1948, he told witness Addy that he had at some time in the past attended "the National Communist School", "located on an estate in New York"; he described to Addy "the secret manner" in which this school was operated and how "every security measure was taken" with respect to it (A. 286). In or about December 1949, he became the Organizer (leader) of the San Francisco "waterfront section" (A. 283, 288), also known as the "Maritime Section."[50]

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[49] The so-called "Little Lenin Library" includes all the basic writings of "Marxism-Leninism".

[50] For articles which Fox has written in this capacity for Party "pre-convention discussion bulletins" in 1950 and 1951, see Ex. 181, p. 2, and Ex. 177, p. 3.

Ben Dobbs.—Petitioner Dobbs, following an active career as a Young Communist League leader in the 1930's, has more recently been active as a Party teacher and labor leader. His most recent Party position reflected by the record has been that of Organizational Secretary[51] of the Los Angeles County Party (A. 108–109, 293).

A member of the Young Communist League since at least as long ago as 1932 (Tr. 6136–6137), Dobbs had by 1935 become its San Francisco "director" (A. 10–11), and he was also in the latter year a "group discussion" leader at League meetings (A. 258). Among the books discussed (*ibid.*) was a *Handbook for Young Communists* issued by the "Educational Department" of the YCL entitled *Young Communists In Action* (Ex. 485 [A. 594]). This *Handbook* explained that the Young Communist League "acknowledge[d] the political leadership of the Communist Party" and shared with it the same "aims and * * * program of action" (*id.*, p. 8 [A. 258, 594–595]), the only "difference between" the two organizations being that the YCL, "a School of Communism", was "open to broad sections of the youth", whereas the Party itself (*id.*, pp. 8–9 [A. 259, 595])—

> * * * admits to membership only those who accept in full the Communist program and the discipline of the Party * * *.

In 1936, Dobbs was one of the group of YCL leaders—others including at least five others of these petitioners (see *supra*, pp. 27–28)—who used to attend

[51] The position next in rank below that of Chairman (*cf.* A. 6).

"underground meetings" of the League in "trusted members' homes" in Los Angeles (A. 262–264). *Two Decades of Progress,* a document published in September 1939 by the Los Angeles Communist Party (Ex. 611), contained a "salute", featuring a photograph of Dobbs, described as the YCL's "executive Secretary", from the Young Communist League to the Communist Party, which it described as the "vanguard party" of the American working class[52] (*id.,* p. 26 [Tr. 5591–5592]).

From 1944 to 1948, Dobbs was one of the group of Party functionaries—others including at least eight others of these petitioners—whom witness Van Dorn used to take by elevator to the Party's seventh-floor San Francisco headquarters on meeting-nights of the California State and San Francisco County Boards. See *supra,* pp. 14–15. Mrs. Van Dorn took Dobbs up in the elevator, she testified, "at least 50 times" during this period (A. 368). In November or December 1946, he was present, together with at least five others of these petitioners, at the Party meeting (see *supra,* p. 17) at which petitioner Yates "spoke on the Soviet power" and related what would have to be done to achieve a "Soviet * * * type of government" "all over the world" (A. 135–136).

By December 1946, Dobbs was "labor chairman", or "County Labor Director", of the Los Angeles County Party (A. 137; Ex. 407), in which capacity,

[52] For the significance of the phrase "vanguard of the working class", see *supra,* p. 12, and Appendix A, *infra,* p. 158. One of the most frequently met expressions in Marxist-Leninist literature, it is jealously claimed by the Party as its most characteristic descriptive phrase.

in May 1947, he was Chairman of a Party-sponsored "May Day Rally" at which petitioner Lima, at that time a member of the Party's National Committee, was the principal speaker (Ex. 407).

In March 1948 (A. 192–193), the Communist Party conducted in Los Angeles a "press school" for the advanced education of Party "press director[s]" (A. 193), admission to which was carefully restricted to persons bearing proper Party credentials (A. 194). Dobbs, an instructor at this school (A. 193–195), required his pupils to read "from page 149 * * * to * * * 159" of the *History of the Communist Party of the Soviet Union (Bolsheviks)*[53] (Ex. 28) (A. 194–195). The students "were granted 20 minutes in which to read" the passage, after which Dobbs "discussed it" with them (A. 195).[54] The passage has to do with the role played by *Pravda*, the official organ of the Russian Bolshevik Party (later the Communist Party of the Soviet Union), in the period preceding the Bolshevik Revolution of 1917. It points out that every issue of the paper was designed to whip up bitterness and resentment among "the workers" so as to achieve "a spirit of proletarian solidarity" among them (Ex. 28, p. 150), and that with these "agitation[al]" aspects

[53] This work, which bears the name of no single author, was "authorized by", "prepared under the supervision of", and "edited by a commission of", the Central Committee of the Communist Party of the Soviet Union (Ex. 28, title page; Ex. 315, p. 4). It was first published in 1939 (Ex. 315, p. 4), and in the same year was copyrighted and published in the United States by International Publishers Co., Inc. (Ex. 28, p. iv), a Party publishing house.

[54] For Dobbs' comments on the passage, see *infra*, p. 47.

of their work the Bolsheviks combined "illegal revolutionary activities" (*id.*, p. 151). *Pravda* "taught the proletariat", the passage states, "that * * * a new revolution was impending" in which "the proletariat must act as the real leader and guide of the people" (*ibid.*). Whereas "[t]he Mensheviks", according to the passage, "worked to get the proletariat to drop the idea of revolution" and to achieve reforms through peaceful methods, "[t]he Bolsheviks explained to the workers that this Menshevik gospel of renunciation of revolution * * * was being preached in the interests of the bourgeoisie", so that "the Mensheviks" were in fact "enemies of the revolution" (*ibid.*). Thus "*Pravda* rallied the legally existing organizations around the illegal centres of the Bolshevik Party and directed the working-class movement towards one definite aim—preparation for revolution" (*id.*, p. 153). To such an extent was this true, states the passage, that the Bolsheviks were in fact called "Pravdists" (*ibid.*).

By thus "skillfully combining illegal work with legal work", the pertinent passage from the *History* continues, "the Bolsheviks won over a majority of the trade union organizations in the two capital cities, St. Petersburg and Moscow" (*id.*, p. 156). The "victory of the Bolsheviks and the defeat of the Mensheviks in the legally existing organizations developed all along the line" (*id.*, p. 157). This victory was achieved "because the Bolsheviks alone had a correct Marxist theory [and] a clear program" and they alone were able to capitalize on "the rising tide of revolution" (*ibid.*). "The revolutionary movement of the workers

steadily developed", continues the passage, "spreading to town after town and region after region" (*ibid.*). The number of striking workers steadily increased (*id.*, p. 158). "Unrest spread to all the factories, and meetings and demonstrations were held everywhere" (*ibid.*). The workers (*ibid.*)—

> * * * started to throw up barricades. * * * In a number of places the police fired on the workers. The government adopted "emergency" measures to suppress the movement; the capital was turned into an armed camp * * *.

While the "advance of the revolution was interrupted by the World War", the passage concludes (*ibid.*), it was later resumed and culminated in the "revolution of October 1917", with the "Pravdists" forming "the hard core" of the triumphant revolutionists (*id.*, p. 159).

When the students had finished reading the above-summarized passage, Dobbs, as we have mentioned, "discussed it" with them, pointing out that it "described the role that Pravda had played in the * * * organization of the revolutionary movement in Russia" (A. 195). Drawing a parallel between "the pre-revolutionary days" in Russia and the present period in the United States, he emphasized to the students that they, as Party "press directors", had the same kind of responsibility with respect to the "PW"[55] and other Party literature as the "Pravdists" had with respect to *Pravda* (*ibid.*).

[55] *I. e.*, the *Daily People's World*, the Party's West Coast newspaper (see *infra*, pp. 110–112).

On another occasion in this same month—March 1948 (A. 186)—Dobbs made a similar comparison between the role of *Pravda* in pre-Revolutionary Russia and that of the *Daily People's World* in present-day America (A. 190–192). This was in a speech which he gave at a Party "functionary meeting" in Los Angeles which was also attended by petitioners Lambert, Healey, and Carlson (A. 186–188). As in the case of the "press school" (see *supra*, p. 45), this was a closed affair, limited to "functionaries only", all persons seeking admission being required to present proper Party credentials (A. 186–187). Dobbs referred in his speech (A. 191) to the same passage from the *History of the Communist Party of the Soviet Union* (see *supra*, pp. 45–47) which he had required his "press school" students to read. He referred among other things to "the value" of *Pravda*, "both when it enjoyed legal * * * existence" and after it was outlawed, "in disseminating information and instructions" to the "members of the revolutionary movement in Russia" (A. 191). The *Daily People's World*, he said, "had a similar purpose over here" in that "[n]ot only did it disseminate news, but it was used when necessary to issue instructions to party workers" (*ibid.*). For this reason, he said, the *Daily People's World* "must not founder", for if that were to happen "we would have no means of communication" with Party workers "other than by word of mouth", with the consequence that the Party in this country would suffer a disadvantage in achieving its aims to which the "members of the revolutionary movement in Russia" were never subject (*ibid.*).

In July 1948, in his capacity as "County Labor Secretary", Dobbs made one of the major reports to the Party's Los Angeles County Convention (Ex. FO, pp. 3, 8), stressing in his report among other things the Party's need to "strengthen our concentration policy"[56] (*id.*, p. 8). And in the same capacity, in January 1949, he "made the main speech of the evening" at the Lenin Memorial Meeting over which petitioner Steinberg presided (A. 210–211; see *supra*, p. 21). In December 1949, by which time he had succeeded to the second-ranking office of Organizational Secretary of the Los Angeles County Party, Dobbs spoke at another Party meeting, at which was celebrated "the 32d anniversary of the Soviet Union" (A. 108–109). In or about March 1950, witness Scarletto, then a Party member, was directed by his "section organizer" to go to the home of Dobbs "to receive instructions on where the next classes [of the Marxist Institute][57] would be held" (A. 96–97). Scarletto was told by Dobbs' wife in Dobbs' presence to wait for another person, "the new instructor", who would conduct Scarletto to the new location, and this was done (A. 97–98).[58]

[56] For details concerning the Party's policy of concentrating its forces in "key" or "basic" industries, *i. e.*, industries "upon which the whole economic system depends"; and the reasons for this policy, see Appendix A, *infra*, pp. 174–177.

[57] For the "Marxist Institute" classes and what was taught therein, see Appendix A, *infra*, pp. 161–164.

[58] In September 1950, witness Lancaster was advised by his "section organizer" that because he, Lancaster, "was associated with a key industry"—the North American Aviation Company—he was not to "carry on any further open activities" in the Party (A. 299); this, Lancaster was told, was at the time a "common" Party ruling, to which "even Ben Dobbs" was subject (A. 300).

Dorothy Healey Connelly (also known as Dorothy Healey).—Petitioner Dorothy Healey Connelly, who is referred to in the record as "Dorothy Healey", has been associated with the Communist Party since at least 1933 (A. 243). From 1945 to 1949, she was Organizational Secretary of the Los Angeles County Party (A. 124–125, 291–292), and since then, until at least April 1951, she has been County Chairman (A. 291–292; Ex. 642 [A. 451]).

In 1936, Healey was one of the group of individuals—others including at least five of these petitioners—who used to attend secret "underground meetings" of the Los Angeles County Committee of the Young Communist League (A. 262–264). (See *supra*, pp. 27–28.) In July 1945, she was present at the National Convention (A. 44) which reconstituted the Communist Party following its "Communist Political Association" interregnum (see Appendix A, *infra*, pp. 144–147); and in August or September of the same year she attended and spoke at the Second Session of the California State Convention (A. 130–131). Declaring in her speech that "the future of the party" was going to be "militant", she urged among other things the "re-education of all Marxists" and the (A. 131)—

> * * * concentration of recruiting in the basic industries, such as the ship industry, steel industry, electrical, transportation, aviation.

She was elected at this session to the Party's California State Committee (A. 124–125; Ex. 398) as well as, at or about the same time, to its No. 2 executive

post for Los Angeles County, *viz.*, Organizational Secretary (A. 124–125).

In August 1946, Healey addressed a Party meeting on the subject of "strikes" (A. 133). "[A]ll strikes in basic industries must be Communist-led", she said, and "trade union leaders" must be "Marxist-trained" (*ibid.*). In addition, she said, the "county Communist Party board" should "from time to time" "be consulted as to [the] progress or success of these strikes"[59] (*ibid.*). In November or December 1946, she was present, together with at least four others of these petitioners, at the Party meeting at which petitioner Yates "spoke on the Soviet power" and told what the Party must do to help bring about a "Soviet * * * type of government" "all over the world" (A. 135–136). In February 1947, she and petitioner Schneiderman made speeches at a Party meeting admission to which was limited to Party members bearing a proper "card" or who could otherwise be "identified * * * at the door" (A. 305). In her speech, Healey, in urging the recruiting of new Party members (*ibid.*), again (A. 306)—

> * * * emphasized the importance of concentrating on the recruiting of * * * workers in the basic industries such as * * * the steel industry, the auto industry, the rubber industry, the oil industry, transportation, coal mining and so forth.

During the first seven months of 1948, Healey was present with petitioners Yates, Schneiderman, and

[59] For the function of the strike, and particularly the general strike, as a political weapon of the Communist Party, see Appendix A, *infra*, pp. 140–143, 160–161.

Richmond at at least one of the previously-mentioned (see *supra,* p. 18) "very secret meetings" of the Party's California State Board held at the home of witness Honig in San Francisco (A. 231). In March 1948, she attended (with petitioners Lambert and Carlson) the "functionary meeting" of the Los Angeles County Party at which petitioner Dobbs analogized the function fulfilled by the Party newspaper *Daily People's World* in present-day America to that of *Pravda,* the Bolshevik Party journal, in pre-Revolutionary Russia (see *supra,* p. 48).[60] In the same month, in her capacity as County Organizational Secretary, she addressed a meeting of "Southside section functionaries" in Los Angeles, the purpose of which was to subdivide the section into two smaller sections for organizational purposes (A. 289–290).

In a July 1948 report which she made to the Los Angeles County Convention (Ex. FO, pp. 2, 8), Healey referred to the Party's war on the "twin evils of left-sectarianism and right opportunism"[61] (*id.,* p. 2) and its struggle to "wipe out * * * the poisonous remnants resulting from Browder revisionism"[62] (*ibid.*). Again stressing the importance of the Party's "policy of concentration" in the "basic" industries, she proposed a "concentration program for Los Angeles" in

[60] Healey, too, spoke at this meeting, admission to which was limited to bearers of proper Party credentials (A. 186–187). In her speech she stressed the necessity of getting active Party members into "positions of leadership" in "labor unions and the factories" (A. 188).

[61] See *infra,* pp. 64–65, and Appendix A, *infra,* pp. 169–170.

[62] See Appendix A, *infra,* pp. 144–147.

accordance with which the Party, as "the vanguard of the working class",[63] would focus its efforts on industrial "concentration points", *i. e.*, those factories and industries containing the "decisive sections" of the working class (*ibid.*). She stressed the need that "our literature", including the "Marxist-Leninist classics", "reach" the workers in these "concentration points" (*id.*, p. 8). And pointing to the importance of "organizational work" in "strengthening our ability to mobilize our forces", she emphasized that, quoting Lenin (*id.*, p. 2),—

> * * * every step of action is worth a dozen excellent arguments about Socialism.

In the summer of 1949, following a plenary session of the Party's National Committee in New York, witness Lautner demonstrated to Healey in his office a portable mimeographing machine designed for use in the Party's "underground" activities (A. 64–67), and she took the machine with her "as a sample" (A. 67–68). By the following September, Healey had succeeded to the Los Angeles County Party Chairmanship (A. 292).[64]

Frank Carlson.—Petitioner Carlson, in 1935 the California "state director" of the Young Communist League (A. 11), was also one of the group of individuals, which included at least five others of these petitioners, who in 1936 used to attend secret "under-

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[63] See fn. 52, *supra*, p. 44.

[64] In January 1950, at a closed Party meeting at which a fellow Party member jocosely introduced her as "the 'Red Queen'," Healey read to the Party members in attendance a letter from National Chairman Foster "congratulating the Los Angeles Communists on their work" (A. 93–94).

ground meetings" of the League's Los Angeles County Committee. See *supra, pp.* 27–28. In the same year he used to lecture to Young Communist League "study groups". (A. 244), and in at least one of his classes he used as the basis of his lecture a work of Lenin's entitled *What Is To Be Done?*, which witness Rosser, one of his pupils, identified as the Government's Exhibit 266 in evidence (A. 244–245). Originally published in Russia in 1902 (Ex. 266, p. 7), the American edition of this work—the one Carlson used—was copyrighted in 1929 by International Publishers Co., Inc. (*id.*, p. 4), a Party publishing house. In an "Editor's Foreword" to this edition (*id.*, pp. 7–8), written by Party publicist Alexander Trachtenberg[65] (*id.*, p. 8), this work of Lenin's is described as "one of [his] outstanding revolutionary writings", "long * * * a classic in its field",—a "brilliant exposition of the policies and tactics of the revolutionary Socialist movement" on which the "first generation of Russian Bolsheviks", including "many of the present Soviet leaders", had been "brought up" (*id.*, p. 7). Pointing out that Lenin viewed as a "travesty on Marxism" the notion that the improvement of labor's "economic" lot should be its "chief preoccupation" (*ibid.*), and observing that Lenin appeals in his book for a "revolutionary" party, made up of persons who will "devote to the revolution * * * the whole of their lives" (*id.*, p. 8), the Foreword describes "the revo-

[65] Trachtenberg was one of the defendants in the trial of the so-called "second-string" Communist leaders in New York. See *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909. He was granted a new trial, and was recently convicted for the second time.

lutionary enthusiasm which permeates [the book's] pages" as well as (*ibid.*)—

> * * * the great lessons it has today for the workers in capitalist countries who would build their revolutionary parties after the pattern fashioned by Lenin * * *.[66]

Carlson told his pupils in his lecture based on this work of Lenin's that they "must look to Lenin for the answer" to the problems of the youth of the world, and that the Young Communist League, which was to be the vehicle of youth's victory in its "fight against fascism", would have to put on "an American front", *i. e.*, be "dress[ed] up" to look like "an American organization", in order that "people would classify us" as such (A. 245). Carlson continued for several years thereafter to be active in League affairs (A. 245–246, 250; Tr. 6227), eventually becoming its president (A. 246).

From the end of 1945 until he left California in 1947 to assume new Party duties in Wisconsin (A. 365; see *infra*, p. 56), Carlson was one of the Party functionaries who "had offices" in the Party's seventh-floor San Francisco headquarters. See *supra*, p. 15. In addition, on at least two occasions in 1946,

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[66] For passages from Lenin's text justifying this evaluation, see Ex. 266, pp. 116–119, 127–128, 163. Of particular interest is Lenin's discussion of the problem of "premature attack", *i. e.*, a revolutionary uprising launched "before political discontent, the ferment and anger of the working class, etc., are sufficiently ripe for it" (*id.*, pp. 127–128). *Cf.* the ruthlessness with which the American Communist Party expels all so-called "left-sectarians" from its ranks on the ground that they are "like the horse that was too far ahead of the cart" (*supra*, pp. 17–18; *infra*, pp. 64–65 and Appendix A, *infra*, pp. 169–170).

he taught "class[es] in Marxism"[67] in these headquarters (A. 361–362), and in the same year he and petitioner Yates co-authored a *Handbook for Club Officers* (Ex. MF) (A. 387–388). See fn. 123, *infra*, p. 113.

In 1947, Carlson left California for Wisconsin, where he became the Party's Wisconsin "state secretary" (A. 280, 365; Ex. 729). In April of that year, he was introduced to Party members at a meeting in Milwaukee as an "organizer" sent by the National Committee to give the Wisconsin Party a "shot in the arm" (A. 276). In acknowledging his introduction, he explained that he had been sent to Wisconsin to "organize" the Party in that state in better fashion, to "get [it] to working better", and to make it "more militant" (A. 277). In the same month he told Party member Estrada that the latter was "a promising young man" who would "make a very good [Party] leader" (*ibid.*) and in this connection he advised Estrada (A. 278) to acquire for himself (among other books) the *Communist Manifesto* of Marx and Engels (Ex. 39), which he referred to as "the bible of the Communist Party" (A. 278),[68] Stalin's *Problems of Leninism* (Ex. 146)[69] and *Foundations of Leninism*

[67] For what the Party was at that time teaching in these classes, see Appendix A, *infra*, pp. 151–161.

[68] For the teaching of the *Communist Manifesto* on the question of the necessity of the use of force and violence in achieving Communist ends, see Appendix A, *infra*, pp. 151, 163.

[69] For pertinent passages from *Problems of Leninism* on the question of the necessity of the use of force and violence in achieving Communist objectives, see Appendix A, *infra*, pp. 156–157, and fn. 31, pp. 157–158.

(Ex. 1),[70] and the *History of the Communist Party of the Soviet Union* (Ex. 28).[71]

He also asked Estrada to organize a Negro "Veterans" organization for the reason that it would be "necessary", when the time for the revolutionary "overthrow [of] this country by the Communist Party" came, that (A. 278)—

> * * * the Negro boys in the North * * * be militant enough to guide the Negro people in the South.[72]

On another occasion he cautioned Estrada not to be inquisitive about the identity of certain Communists (A. 278–280) since "some of these people aren't to be known as Communists" (A. 280).

In March 1948, Carlson, who had in the meantime returned from Wisconsin to California, was present with petitioners Lambert and Healey at the "functionary meeting" of the Los Angeles County Party at which Dobbs analogized the role of the Party newspaper *Daily People's World* in present-day America to that of the Bolshevik Party newspaper *Pravda* in pre-Revolutionary Russia. See *supra*, p. 48. In

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[70] For pertinent quotations from *Foundations of Leninism* concerning the need for force and violence in achieving Communist goals, see Appendix A, *infra*, pp. 152–153, 156, 158, 160.

[71] For relevant excerpts from this Marxist-Leninist "classic", see *supra*, pp. 45–47, and Appendix A, *infra*, p. 155.

[72] Carlson related to Estrada, in this connection, an incident alleged to have occurred in the South, involving "100 * * * armed" Negroes, as an illustration of how "the party has been helpful to the Negro in the South" (A. 277–278). In reply to Estrada's query as to "how did * * * the Negro people down in the South get guns", Carlson said that "the party has methods of doing so" (A. 278).

October 1949, he made a half-hour visit to a session of one of the "Marxist Institute" schools (see Appendix A, *infra*, pp. 150, 161–164) in Los Angeles, the instructor introducing him to the class as "the county organizer" (A. 84). And in June 1951 he was present throughout a four-hour interrogation of witness Scarletto, then a Party member, in connection with a Party "security" investigation of this witness (A. 89–91, 104–105). Scarletto was questioned among other things as to whether he "knew any FBI agents or any policemen" (A. 90), and when it was discovered that Scarletto had the telephone numbers of two other Party members on his person, his interrogators admonished him for thus subjecting fellow Party members to the risk of "get[ting] caught" (A. 91).[73]

William Schneiderman.—Petitioner Schneiderman, a "professional revolutionist" who has given his "whole life" to the Party,[74] has been for many years its California leader and State Chairman (see *infra*, p. 60) as well as one of its national leaders since the early 1930's.[75]

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[73] Yates, the second-ranking official of the California Party (see *supra*, p. 11), testified that during the five-year period preceding the trial she had "been in frequent contact with Mr. Carlson" in connection with her "duties as a member of the Communist Party" (A. 396).

[74] Schneiderman was so described by Party member Steve Nelson in a speech at the 1945 California State Convention (A. 14–15).

[75] Schneiderman was a regular member of the Party's National Committee from 1934 to 1948 (A. 57, 131–132; Ex. MM–1, p. 96; Ex. 650 [A. 598]), since which time he has been an alternate member of that body (A. 115–116; Tr. 301).

Having joined the Young Communist League, at that time called the Young Workers' League (Ex. MM–1,[76] pp. 89–90), in 1922 at the age of sixteen (*id.*, pp. 86, 357), Schneiderman was an organizer and charter member of its California branch (*id.*, p. 87). In 1928, after having served for a number of years as the League's educational director, in which capacity he organized and directed its forums and classes in Marxism-Leninism (*id.*, pp. 87–89), he became its executive head and "official spokesman" (*id.*, p. 91). His membership in the Party proper dates from 1924 or 1925 (*ibid.*), at which time it was known as the Workers' Party (*id.*, pp. 91, 93). After serving as Secretary of the Party in Los Angeles for a number of years (*id.*, p. 92), he became in 1930 Organizational Secretary for "District 13" (*id.*, pp. 92–93), which embraced California and several other states in addition to the Territory of Hawaii (*id.*, p. 96; Tr. 436). Later in 1930, he became the Party's District Organizer for the Connecticut District (*id.*, pp. 94–95), and from 1931 to 1934 he held the corresponding office in the Minnesota District (*id.*, p. 95).

From June 1934 to September 1935, Schneiderman was the Party's delegate to the Seventh World Congress of the Communist International in Moscow (A. 333, 335; Ex. MM–1, p. 95), and during this period he lectured at the Lenin Institute[77] in that

[76] Exhibit MM–1, a defense exhibit, is the transcript of record in the denaturalization proceeding which reached this Court in *Schneiderman* v. *United States*, 320 U. S. 118. The references are to Schneiderman's testimony in that proceeding.

[77] This was the institute which petitioner Stack attended as a student at about that time (see *supra*, pp. 23–24).

city (A. 340). Upon his return to the United States in 1935, he was appointed by the National Committee (A. 2) as District Organizer for "District 13," a position he held until the Party "was reorganized on a state basis" some time thereafter, at which time he became the California Party's "state secretary" (Ex. MM–1, p. 96). Some time between 1942 and 1945 (see Exs. 571 [A. 446] and 566 [A. 446–447]), he succeeded to the State Chairmanship of the Party, a position he has continued to occupy ever since (Tr. 301; Exs. 566, 562, 570, 561, 569, 564, 582, 575 [A. 446–450]).

At his denaturalization hearing in 1939, which culminated in this Court's decision in *Schneiderman* v. *United States*, 320 U. S. 118, Schneiderman, when questioned on cross-examination concerning his 1934–35 visit to the Soviet Union, denied that his trip to that country had been made in the capacity of a delegate or official representative of the American Communist Party to the Communist International (Ex. MM–1, pp. 95–96). He simply "went there on a visit" and to "stud[y] conditions", he testified, though he admitted that the Seventh World Congress of the Communist International was in session while he was there and that he "attended that" (*id.*, p. 95). At the instant trial, however, witness Honig gave sharply differing testimony.[78] Honig testified that Schneiderman not only was a delegate, but that he was in fact "the only" delegate, of the American Communist Party to the Communist International during the

[78] Which testimony, moreover, stands uncontradicted in the present record.

period in question (A. 335). Honig, who was himself a delegate of the Party to the Red International of Labor Unions during the same period (A. 333–334), testified that Schneiderman told him before they left the United States that he, Schneiderman, "was being sent as a representative of the American Communist Party to the Communist International in Moscow" (A. 333). He further testified that during their stay in Moscow they frequently saw each other at Comintern meetings (*ibid.*). Schneiderman's duties as delegate to the Comintern, he told Honig, included attendance at meetings of the Comintern and of the Red International of Labor Unions and reporting on their proceedings to the Party in this country (A. 334).

Honig described, moreover, a meeting of the Red International of Labor Unions, attended by Schneiderman, at which the 1934 San Francisco waterfront strike (see Appendix A, *infra*, pp. 140–143), then in progress, was discussed (A. 335–338). Solomon Lozofsky, the RILU head, stated at the meeting that he had received a letter from Earl Browder, the then general secretary of the American Communist Party, stating that "the party was endeavoring to spread" this waterfront strike "into a general strike of all workers" in San Francisco, and he read portions of Browder's letter to the delegates (A. 336–337). He then "threw the floor open to discussion" as to the proper "policy for the American Party to pursue" with respect to such a proposed general strike (A. 337). In particular, he "called upon Schneiderman", as the "American representative to the Comintern", to "state his opinion on

what the American policy should be" (*ibid.*). Schneiderman replied that he considered the proposed extension of the waterfront strike into a general strike an "excellent" idea and that in his judgment "such a general strike could be produced" (*ibid.*). Lozofsky "reminded" the delegates of the "basic Communist Party policy throughout the world" that "general strikes should be regarded as rehearsals for seizure of power by the party" (A. 338). Other delegates, including Schneiderman, "endorsed what Lozofsky said", Schneiderman remarking that "such a general strike would offer an excellent rehearsal for seizure of power in the United States by the American Communist Party" (*ibid.*). It was accordingly decided that the RILU should recommend to the Comintern that the latter "instruct the [American] party directly to prepare such a general strike" (A. 346–347).

The Comintern meeting at which "the San Francisco situation" was taken up was held later that same week, Honig further testified (A. 338–339). Among those present, in addition to Honig, Schneiderman, and RILU head Lozofsky, was Dimitri Manuilsky, the "head of the Communist International" (*ibid.*). After Lozofsky had introduced the subject of "the San Francisco situation" and reported the RILU's recommendations with respect thereto, Manuilsky stated that he too (A. 339)—

> * * * felt there was need of immediate action on the part of the American Communist Party to bring about such a general strike * * *; that [he and Lozofsky] hoped to start

> such a general strike up and down the Pacific coast, but to start it immediately or as soon as possible, anyway, in San Francisco.

Schneiderman repeated his previously-expressed view that in his judgment "the situation" was "ripe" for such a general strike (A. 339–340), following which the delegates unanimously voted to issue "instructions * * * from the Communist International" "to the American party" to "immediately prepare for such a general strike" (A. 339, 346–347).[79]

Thereafter, in July 1934, the American Communist Party, as it itself claimed in its official theoretical organ, *The Communist*, brought to pass, or was instrumental in bringing to pass, a general strike which for four days immobilized the entire city of San Francisco and the surrounding Bay area. See Appendix A, *infra*, pp. 140–143.

Two years later, in September 1936, Schneiderman participated in a Party meeting at which the idea of bringing about a second general strike was broached, this one to tie up "the entire West Coast" (A. 340–342), with the objective of staging another "[rehearsal] for seizure of power" (A. 342).

On another occasion in 1936 Schneiderman advised one Carlisle, the editor of the *Western Worker*, the Party's West Coast newspaper, that he "was being removed as editor" because of his "dilettante attitude towards his job" (A. 342–343). Pointing out that the "ultimate aim of the party", and hence the *Western*

[79] Honig's testimony concerning Schneiderman's acts and statements in Moscow was offered and received only as against him (Tr. 7690–7691).

Worker's only reason for being, was "to bring about a revolution in the United States and seizure of power by the Communist Party", Schneiderman told Carlisle that his "dilettante attitude * * * was not serving such a purpose" (A. 343).[80]

In April 1945, Schneiderman was present at the previously-mentioned (see *supra*, pp. 15–16) "Mother" Bloor reception at which that lady foretold that "the day of the revolution" with its "bloody battle" was near at hand (A. 369, 371). He afterwards cautioned another of the guests, witness Van Dorn, to keep "everything that [Mother Bloor] said" to herself, as that sort of talk should "be kept quiet" (A. 370–371).

In February 1947, Schneiderman addressed a Party meeting—at which at least three others of these petitioners were also present (A. 145–147)—on the subject of "left sectarianism and right deviations" (A. 146). With respect to "left sectarians"—a Marxist category which included certain Party members who had recently been expelled[81] and who "were accusing [the Party] of not being a revolutionary party"—Schneiderman said that they (*ibid.*)—

> * * * were like the horse that was too far ahead of the cart, that they were impatient, they wanted the party to embark on adventur-

[80] Schneiderman also admonished Carlisle not "to forget" that such Party policies as the "United Front" and anti-"fascism" were merely "tactic[s]" serving the Par y's "ultimate aim of overthrow of the bourgeois government of the United States" (A. 343).

[81] See Appendix A, *infra*, pp. 169–170.

> ous campaigns that would lead to the destruction of the party * * *.

He assured those present, nevertheless, that the Party was "still" a Party of "revolution" (*ibid.*) and that its "ultimate goal" of "socialism" could only be attained "through violent revolution" (A. 147). But he pointed out that "revolution is serious business" (A. 146), that (A. 146–147)—

> * * * revolution means tragedy, it means violence and bloodshed, * * * sacrifices, the loss of property, the loss * * * of relatives, the loss of our own lives * * *.

And while lives "were expendable to achieve the ultimate goal," it was necessary, he said, before a revolution could actually be launched, to lay a careful groundwork—"a mass base"—"among labor, farmers, and minority groups" in order to insure that the uprising, once begun, would end in victory (*ibid.*).

The "right deviation[ists]", on the other hand, said Schneiderman, were guilty of the error opposite to that of "left sectarianism", they being the ones who, having "tied the party" under Browder's leadership "to the code [*sic:* coat?] of the bourgeoisie", had "anesthetized [its] revolutionary potential" (A. 147).[82]

Al Richmond.—Petitioner Richmond has been for many years the executive editor, *i. e.*, editor-in-chief,

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[82] Among Schneiderman's numerous subsequent Party activities (see, *e. g.*, A. 100, 112–113, 203–204, 206, 224–226, 229–231; Exs. 159A, 186, p. 1 [A. 580], 187, 191, 736A) was his collaboration with petitioner Yates in the preparation of one of the "study outlines" (Ex. 163 [A. 620–626]) used by the Party in its 1949–50 "Marxist Institute" schools and classes (A. 396–397; see Appendix A, *infra*, pp. 161–164).

of the Party's West Coast newspaper, the *Daily People's World* (A. 112–113, 367, 405–406; Ex. 186, p. 7; Ex. 736A, p. 2 [see A. 204–205]).

He has been a Party member since at least as long ago as 1931 when, as Organizational Secretary of the Philadelphia District of the Young Communist League, he was "instruct[ed]" by his superior, witness Patterson, to "join the Communist Party" (A. 211–212). In 1932, he covered the New York "waterfront" for the Party's East Coast paper, the *Daily Worker*, in addition to being on its "editorial board" (A. 213). When in December 1937 the Party changed the name of its West Coast paper from the *Western Worker* to the *Daily People's World*, he was selected by the Party's "Central Committee", *i. e.*, its National Committee, to be the paper's managing editor (A. 10; Ex. 636, p. 1). From September 1946 to June 1948 (A. 363, 364, 367–368), he was one of those whom witness Van Dorn used to take by elevator to the Party's seventh-floor San Francisco headquarters on meeting-nights of the California State and San Francisco County Boards. See *supra*, pp. 14–15. He rode up with her, Mrs. Van Dorn testified, on "[s]o many [occasions] I couldn't tell you" (A. 368). In December 1946, he "stressed" in a speech "the Leninist and Marxist approach" in every issue of the *Daily People's World* (Tr. 3953–3954). From December 1947 to May 1949, in company with at least seven others of these petitioners, he attended "[a]t least two dozen" "very secret meetings" of the State and San Francisco County Boards at the home of witness Bessie Honig (A. 224–234).

In 1948, Richmond reported to the Party's California State Convention on the *Use [of] the Press as a Key Political Weapon* (Ex. 186, p. 7). Warning that the press was the Party's "weakest sector", he said there was grave danger that the Party's "tactics of the united front from below" would never bear fruit and that its "vanguard role"[83] would never be "fulfill[ed]" until it achieved greater success in "reaching the masses" (*ibid.*). In 1950, he and petitioner Yates were two of the three individuals who composed the "special committee" established by the State Committee to "help develop the preconvention discussion" (Ex. 181, p. 1).

In December 1950, he and petitioner Lima addressed the Party's "West Oakland convention" (A. 110–112; Tr. 3562), concerning which (see *supra*, p. 33), such extraordinary precautions were taken to safeguard the secrecy of its location.[84] He likewise addressed the East Bay "regional convention" of the following month (A. 112–113), similar precautions in the interest of secrecy having been taken with regard to this convention (*supra*, p. 33). In an article entitled *Strike Struggles—Some Key Conclusions*, which he wrote for the spring 1951 issue of the California Party's "preconvention discussion bulletin" (A. 100; Ex. 191, p. 1), he castigated the "no-strike" policy adopted by the leading labor organizations following "U. S. intervention in Korea", charging that this

[83] *I. e.*, its role of leader of the proletariat in the planned revolutionary seizure of power. See *supra*, pp. 12, 44 (fn. 52), and Appendix A, *infra*, p. 158.

[84] Richmond "represent[ed] the state committee" at this convention (A. 111).

policy was part of a plot which these organizations had entered into with "big business" to support the United States' "imperialist aggression" against Korea (Ex. 191, p. 3).

Philip Marshall Connelly.—Petitioner Connelly was at the time of the trial, and had been for some years prior thereto, the "Los Angeles editor" of this same West Coast Party organ, the *Daily People's World* (A. 294–295, 406; Ex. 736A, p. 2 [see A. 204–205]).

He has been a Party member since at least 1938, when he was a Party delegate to a convention of the International Newspaper Guild in Toronto (A. 344–345).[85] In June or July 1940, he was present with petitioner Steinberg at the County Committee meeting of the Los Angeles Party at which was discussed the Party's campaign strategy in the forthcoming Presidential election, including the proposed use of the slogan "Don't support the imperialist war; vote Communist"[86] (A. 247–248). In March 1941, at another meeting of this Committee, the purpose of which was to discuss ways and means of "mobilizing" community sentiment against the war as "imperialistic" and "to raise the slogan among the people of defense of the Soviet Union",[87] Connelly said that "if the Commu-

[85] For witness Honig's account of the strategy conferences participated in by Connelly and the other Communist delegates to this convention, among whom was the "head of the Communist Party of Canada" (A. 346), for the purpose of "co-ordinat[ing] their activities" so as to achieve the "desired aims" of the Party at the convention and in particular to capture control of the Guild's "executive board", see A. 344–346.

[86] Concerning which slogan see fn. 18, *supra*, p. 20.

[87] The German-Soviet Non-Aggression Pact was still in effect at that time (see A. 255).

nists work[ed] correctly, they could really do a good job" in these respects, particularly in "building up sentiment against * * * the war effort" among steel, aircraft, and shipyard workers (A. 251–252). At a Party meeting in June 1941, held during a strike at the North American Aviation Company, to settle which "the government had threatened to bring in * * * soldiers", he stressed "the need for the Communists to get together and mobilize the city" against such "government interference" (A. 253).

From the fall of 1945 to June 1948 (A. 364, 374), Connelly was one of the group of individuals whom witness Van Dorn used to take by elevator to the Party's seventh-floor San Francisco headquarters, after checking their names from the check list supplied her, on meeting-nights of the California State and San Francisco County Boards. See *supra*, pp. 14–15. Mrs. Van Dorn took Connelly up, she testified, on at least a "half dozen" occasions during this period (A. 374). And in or about May 1947 he was present at a Party meeting at which was discussed the question of "whether or not the Party would have to go underground", and at which a Party member "from New York" told the local members that he would "help them in any way possible" in such a project (A. 331–332).[88]

[88] See Appendix A, *infra*, pp. 170–174. For other Party activities of Connelly, including his participation in a Party group discussion program on "why * * * I join[ed] the Communist Party" (A. 329–330), see A. 140–142, 253–255, 275.

SUMMARY OF ARGUMENT

I

Petitioners' convictions are not based, as they claim, on an interpretation of the Smith Act which conflicts with the First Amendment as construed in *Dennis* v. *United States*, 341 U. S. 494. On the contrary, this case is governed by *Dennis* with respect to First Amendment issues.

A. The trial judge correctly explained to the jury the meaning of "advocacy" of violence. There was no need to give petitioners' requested instruction explaining that meaning in terms of "incitement" to violence. The word "incite" has two shades or variants of meaning. It may connote, on the one hand, simply the idea of "urging" the taking of some action, without any necessary implication that such action is urged to be taken *immediately*. In this sense of "incite," the requested instruction was quite correct. But there is another, and perhaps more common, sense of "incite" which involves precisely this connotation of immediacy. In this sense—the sense in which the term was suggested by petitioners' counsel—the term would be inappropriate, since it might have given the jury the mistaken impression that in order to convict it was necessary for them to find that the object of the conspiracy was the advocacy of *present* force. *Dennis* makes clear that no such finding is necessary.

B. The "clear and present danger" test is satisfied. The question is not alone how imminent, in some absolute sense, the forcible overthow of the Govern-

ment was, during the three-year period (1948–1951) preceding the return of the indictment, as a consequence of petitioners' activities. The Government need not wait to take punitive action against the advocacy of its violent overthrow until such overthrow becomes a literal "present danger." The question is whether the gravity of the evil, discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger. *Dennis* v. *United States*, 341 U. S. at 510. If, as *Dennis* held, the danger was sufficiently clear and present in 1948, it can hardly be thought to have been less so in 1951, when the Korean conflict was raging and our relations with the Communist world had moved from "cold" to "hot" war. *United States* v. *Flynn*, 216 F. 2d 354, 367 (C. A. 2), certiorari denied, 348 U. S. 909.

That petitioners may have lacked the power, as individuals, to bring about the evil at which the Smith Act strikes is immaterial. The point is that they, like the *Dennis* defendants, were parties to and, in high degree, *leaders* of the same "highly organized conspiracy, with rigidly disciplined members subject to call when the leaders * * * felt that the time had come for action" (341 U. S. at 511). And it is "the existence of the conspiracy which creates the danger" (*ibid.*).

II

Even if, as petitioners claim, the part of the indictment which charges them with having conspired to "organize as the Communist Party" a society of persons who teach and advocate the forcible overthrow

of the Government was barred by the statute of limitations (on the theory that the organization of the Party was completed more than three years prior to the indictment's return), that fact could make no difference in the circumstances of this case. The jury, by its verdict, must have found that petitioners conspired to advocate and teach the duty and necessity of forcibly overthrowing the Government *and* to "organize as the Communist Party" a society of persons who so teach and advocate. There is consequently no basis for the assumption (on which petitioners' contention rests) that the jury "may have convicted petitioners for conspiring to 'organize', even if they found no conspiracy to 'advocate and teach'" (Br. 288).

In any event, petitioners' argument that the Communist Party was completely "organized" in 1945, within the meaning of the "organizing" clause of the Smith Act, with the result that the statute of limitations barred prosecutions for conspiring to violate that part of the Act after 1948, is untenable. The organization of a group such as the Communist Party is a continuing process, as no one recognizes better than the Party itself. This very case provides an abundance of evidence that the organizing of the Party is not the static event for which petitioners contend, but rather a process which goes on constantly as the Party, day by day, seeks to improve its position, regroup its forces, and strengthen its structure as it prepares itself for effective action when the call comes.

Congress was not concerned, when it enacted the "organizing" provision of the Act, with the procedural mechanics by which a paper organization is initially established. What it was concerned with is continuing activity to recruit and indoctrinate members—and their gradual organization into units and branches of an ever more efficient, but sinister, working group. Petitioners' construction would defeat to a major degree the congressional purpose behind the clause in question. For under their interpretation this provision, enacted in 1940, could never have been applied to the leaders and organizers of the Communist Party (which was initially organized in 1919), had it not been for the fortuitous 1944–45 interlude of the "Communist Political Association," followed by "reconstitution" of the Party. But the legislative history shows beyond any doubt that the organization at which the Act was particularly aimed was the Communist Party.

The meaning which the judge attributed to the term "organize", moreover, finds ample support in its common or dictionary definition.

III

The evidence, which was in essentials uncontradicted, amply supports the convictions. Petitioners' challenge of the sufficiency of the evidence is primarily an attack on the veracity of the prosecution witnesses. But the credibility of the witnesses was for the jury to determine.

The prosecution's proof did not consist, as petitioners argue, merely of evidence that they were

members and officers of the Communist Party. In the first place, petitioners were shown to have been, not simply members and officers of the Party, but the long-time California *leaders* of that organization. In the light of the nature of the Party as shown by the evidence, particularly its highly disciplined character, the jury would have been thoroughly justified in refusing to believe that petitioners could have risen to the high positions in the Party hierarchy to which the evidence shows they did rise, without having come to know along the way, and to know very well, the Party's central teaching on the duty and necessity of forcibly overthrowing this Government, and without personally intending and desiring that this basic Party aim be realized "as speedily as circumstances would permit." Furthermore, the jury had before it a wealth of additional evidence—personal acts, statements, and teachings by petitioners themselves, as well as acts, statements, and teachings of others done or uttered in their presence—which in its cumulative effect was far more than sufficient to warrant the conclusion that each petitioner possessed the necessary knowledge of the Party's violent objective and the specific intent to achieve that aim.

The fact that petitioners Richmond and Connelly's role in the over-all conspiracy was primarily that of editing the Party's West Coast newspaper does not insulate them from the consequences of their having knowingly joined the conspiracy.

IV

The commission of overt acts in furtherance of the conspiracy within the limitations period was adequately proved. First, the commission of many such acts within the statutory period, the sufficiency of which is hardly questionable, was established by the evidence. Second, the two overt acts which were charged as such and proved (attendance at "Lenin Memorial Meetings") were also of a quality sufficient to fulfill the statutory requirement. It was at such meetings that the Party was augmented and strengthened through the recruitment of new members. Lenin, moreover, was the architect and guiding genius of the Russian Bolshevik Revolution, which Communists the world over seek to duplicate. And the great majority of the Marxist-Leninist "classics"—the chief medium of the Party's teachings on force and violence—either were written by Lenin or purport to expound his teachings. At at least one of the rallies, moreover, an appeal was made for funds with which to finance the continuation of the Party's activities. It was not necessary that appeals to overthrow the Government by force be made at such a meting in order for attendance at the meeting to fulfill the overt act requirement. The overt act need not be criminal in character at all; much less the very crime which is the object of the conspiracy.

V

Petitioners received a fair trial.

A. The trial judge did not abuse his discretion in refusing to grant a continuance because of the publi-

cation in a Los Angeles newspaper, during the weeks immediately preceding the commencement of the trial, of the so-called "Philbrick articles," none of which mentioned any petitioner. All prospective jurors were specifically questioned at the *voir dire* examination as to whether they had seen or read these articles. Only one panel member answered affirmatively, and she was not among those selected to sit on the jury which heard the case.

B. The refusal to declare a mistrial on the basis of the publicity given to the release by a Senate Committee of an FBI memorandum purporting to set forth "documentary proof" that the Communist Party teaches forcible overthrow of the Government was a proper exercise of discretion in the circumstances of this case. The memorandum contained nothing that was not contained in the exhibits which the jury had heard read into evidence. Realistically, moreover, it could not have been news to any juror that the FBI shared the prosecution's view that the Communist Party teaches forcible overthrow of the Government, especially in view of the fact that defense counsel had themselves brought out at the trial the fact that agents of the FBI had sat at the government counsel table throughout the trial. The most that petitioners were entitled to was to have the judge question jurors as to whether any of them felt in the slightest degree unable, as a result of the incident, to base his verdict solely on the evidence adduced in the courtroom, and to have any juror who might answer affirmatively replaced by an alternate juror. The judge offered to do this, but petitioners rejected the offer.

VI

Petitioner Schneiderman's prosecution was not barred by this Court's 1943 decision setting aside his denaturalization. The determination of fact which the jury made against Schneiderman in this case was not inconsistent with what the Court determined in the earlier case. The only question involved there was whether the Government had sustained its burden of proving by "clear, unequivocal, and convincing" evidence that Schneiderman was not, on the date of his naturalization in 1927, and had not been during the preceding five-year period, attached to the principles of the Constitution and well disposed to the good order and happiness of the United States. The issue here was whether Schneiderman had been, from 1948 to 1951, a knowing member of a conspiracy to teach and advocate the duty and necessity of forcibly overthrowing this Government and to organize as the Communist Party a society of persons so teaching and so advocating. Not only were the critical time-periods in the two cases some 20 years removed, but this Court made very clear in *Schneiderman* that it was not passing upon the question of whether the Communist Party at that time taught and advocated, or had ever taught and advocated, the forcible overthrow of this Government. The fact established by *Schneiderman* was merely the negative one that the Government had failed to prove by the requisite standard of evidence that Schneiderman was not attached to the Constitution during the critical years preceding his naturalization; the Court did not decide that he

was so attached. There being no inconsistency between what the earlier case decided and what the jury had to find to convict Schneiderman in this case, the principle of *res judicata*, or collateral estoppel, did not bar his prosecution. *Sealfon* v. *United States*, 332 U. S. 575.

ARGUMENT

The petitioners, as the principal organizers and leaders of the Communist Party in California, have been convicted of conspiring with the defendants in *Dennis* v. *United States*, 341 U. S. 494, to teach and advocate, and to help to organize the Communist Party to teach and advocate, the violent overthrow of the Government of the United States. The petitioners' dominant ro in the Communist Party in California is undisputed. Their convictions were based upon evidence closely paralleling that adduced in the *Dennis* case and upon the principles enunciated by this Court in that case. Their activities were carried on in the same context of world conditions which in *Dennis* and in *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909, was held to justify the application of the Smith Act. The challenges which petitioners make to their convictions are all without merit, and there is no reason to overturn the verdicts against them.

I

THE SMITH ACT AS CONSTRUED AND APPLIED IN THIS CASE DOES NOT VIOLATE THE FIRST AMENDMENT

Petitioners strongly contend (Br. 216–274)[39] that their convictions are invalid because they are based on an interpretation and application of the Smith Act which assertedly conflicts with the First Amendment as construed by this Court in *Dennis* v. *United States*, 341 U. S. 494. We submit that there is no such conflict; on the contrary, the instant case is governed and controlled by *Dennis* so far as any question relating to the First Amendment is concerned.

A. *The instructions to the jury correctly explained the meaning of "advocacy" of violence, and there was no need to give petitioners' requested instruction explaining that meaning in terms of "incitement" to violence—a term bearing an inappropriate connotation of immediacy*

Petitioners' first contention (Br. 216–258) is that the trial court's instructions to the jury did not properly explain the meaning of "advocacy" of force and violence as used in the Act and indictment and as construed by this Court in the *Dennis* case. Specifically, they say, it was error for the court to refuse to give their requested instruction that, to convict, the jury must find that the object of the conspiracy was ad-

[39] "Br." will be used to refer to petitioners' main brief, that in No. 6. The petitioners who petitioned separately—Schneiderman (No. 7) and Richmond and Connelly (No. 8)—adopt all the contentions of the main brief by reference, and advance others peculiar to themselves. References to the separate briefs of these latter petitioners will be indicated by the abbreviations "Br., No. 7" and "Br., No. 8". References to the petition for certiorari ("Pet.") are to the petition in No. 6.

vocacy of the violent overthrow of the Government by language "reasonably and ordinarily calculated to *incite* persons to such action" (Br. 220–227, emphasis added). Petitioners' reliance on *Dennis* is misplaced; their requested instruction is not essential to sustain a Smith Act conviction.

It is true that in the *Dennis* case Judge Medina's charge included an instruction like the one requested here.[90] And it is likewise true that this instruction was quoted in two of the prevailing opinions in this Court in connection with the general discussion of the First Amendment issue (*Dennis* v. *United States*, 341 U. S. 494, 511–512 (main opinion[91]), 544–545 (Mr. Justice Frankfurter, concurring)). Nothing in these opinions, however, warrants petitioners' conclusion that this exact instruction—or its substance, provided at least the specific word "incite" be used[92]—*must* be included in the instructions to the jury in all Smith Act prosecutions for convictions thereunder to be sustainable.[93]

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[90] See Record, No. 336, Oct. Term, 1950, pp. 12486–12487.

[91] We shall thus refer to the opinion of Mr. Chief Justice Vinson, in which Mr. Justice Reed, Mr. Justice Burton, and Mr. Justice Minton joined.

[92] It is clear from petitioners' argument that they regard "incite" as a key and crucial word in the instruction in question, so that, while they would not insist on a *verbatim* repetition of the instruction, they would accept no substitute for "incite"—such, for example, as "urge", a word Judge Mathes did use in his instructions (see *infra*, pp. 85–86).

[93] Neither opinion, in quoting the instruction in question, was addressed to the present issue. The focus of attention in the main opinion was, in fact, on a different paragraph of Judge Medina's charge (see 341 U. S. at 512–513).

The Government's view with respect to the instruction in question is that, while, properly understood, it is entirely correct,[94] there is on the other hand nothing sacrosanct about its phraseology, and that the idea which it was intended to express can be expressed equally well, and was in fact conveyed in the charge in this case, in other language.

The word "incite" has two shades or variants of meaning. It may connote, on the one hand, simply the idea of "urging" the taking of some action, or "moving to action by inducement or persuasion",[95] without any necessary implication as to *when* such action is meant to be or is urged to be taken. Specifically, there is in this sense no implication that the action to which the speaker "incites" his listener is meant to be taken *immediately*. This was the sense in which Judge Medina used the term in his *Dennis* instructions (since there was no evidence that the defendants in that case, any more than the defendants in this case, ever advocated the use of *immediate*

[94] The instruction has been given in several Smith Act prosecutions since the *Dennis* case (see, *e. g.*, *Frankfeld* v. *United States*, 198 F. 2d 679, 687 (C. A. 4), certiorari denied, 344 U. S. 922), including *United States* v. *Mesarosh*, 223 F. 2d 449 (C. A. 3), pending on certiorari, No. 20. The Government, in fact, included the instruction among its own proposed instructions in the present case (see Government's Proposed Instruction No. 21, appearing at pp. 35–36 of the Appendix to petitioners' reply brief below, which petitioners have filed with the Clerk of this Court).

[95] See, *e. g.*, Webster's *New International Dictionary* (2d ed., unabridged); Funk & Wagnalls, *New Standard Dictionary* (1947); *Century Dictionary and Cyclopedia* (1911); Murray, *New English Dictionary* (1901).

violence[96]), and this was the sense in which it was acceptable to the Government in this and other Smith Act prosecutions (see fn. 94, *supra*, p. 81).

There is, however, another sense of "incite"—and perhaps a more common one—which involves precisely this connotation of immediacy. The various standard dictionaries, for example (see fn. 95, *supra*, p. 81), give as synonyms for the term—in addition to expressions of neutral shade so far as any connotation of immediacy is concerned—such words and phrases as "goad", "instigate", "stir up", "rouse", "fire", "excite", etc. One dictionary gives "to spur or urge on" as a synonym, adding, by way of illustration, "as, to *incite* a mob to violence."[97] The connotation of immediacy in such an example is, of course, unmistakable.

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[96] To the contrary, as the evidence in the present case so forcefully demonstrated, the advocacy of violence before conditions are "ripe" for revolution is uncompromisingly opposed by the Party as "left sectarianism"—a deviation from the proper principles of Marxism-Leninism; and the advocates of such premature use of violence are ruthlessly expelled as enemies of the Party who, because they lack a real appreciation of the magnitude of the task involved in such an undertaking, endanger the Party's program and objective of *successful* revolution achieved through the *opportune* use of violence (see *supra*, pp. 16, 17–18, 41, 55 [fn. 66]; Appendix A, *infra*, pp. 139–161, 169–170). The "left sectarians", as petitioner Schneiderman so aptly phrased it, by being "impatient" and "want[ing] the party to embark on adventurous campaigns", are "like the horse that was too far ahead of the cart" (*supra*, pp. 64–65). There was a real danger, as Schneiderman pointed out, that such "adventurous campaigns", or sporadic acts of violence committed without realistic prospects of early victory, "would lead to the destruction of the party" (*ibid.*).

[97] Webster's *New International Dictionary* (2d ed., unabridged).

The ambiguity to which we refer has definite relevance in the context of a Smith Act trial. The following colloquy at the instant trial between Judge Mathes and trial counsel brought the issue sharply to focus (Tr. 12441–12442):

> The COURT. What is * * * language that is incitement to action? That means anything at all to me. I don't know what it would mean to the jury.
>
> Mr. MARGOLIS [a defense attorney]. It means to act immediately, to move right now into action. It means the man who is standing——
>
> Mr. NEUKOM [a government attorney]. I can't agree.
>
> Mr. MARGOLIS. — before a group and he says, "Go break open the bar and lynch that man in the jail." That is what incitement means. It means it moves them to immediate action. Shouting fire in a crowded theatre is language of incitement, your Honor.
>
> The COURT. All language worth listening to involves ideas. It is language of incitement, isn't it, to a greater or less degree?[98] The test here is not immediately, but as speedily as circumstances would permit.

This colloquy (see also Tr. 9693) makes clear why Judge Mathes was unwilling to instruct the jury as to the meaning of "advocacy" in terms of "incitement to action." He was concerned—not without reason—lest to do so might have given the jury the mistaken im-

[98] *Cf.* Mr. Justice Holmes' observation that "Every idea is an incitement" (*Gitlow* v. *New York*, 268 U. S. 652, 673 (dissenting)), and Mr. Justice Frankfurter's reference to Holmes' observation in his concurring opinion in *Dennis*, 341 U. S. at 545.

pression that in order to convict it was necessary for them to find that the object of the conspiracy was the advocacy of *immediate* violence—the teaching of a duty to overthrow the Government by the use of *present* force. That such an impression would indeed have been a mistaken one—that it is not necessary for the jury in a Smith Act prosecution to make any such finding of advocacy of immediate violence—is plain from all of the prevailing opinions in the *Dennis* case. See 341 U. S. at 509 (main opinion); *id.* at 545–548 (Mr. Justice Frankfurter, concurring); *id.* at 568–570 (Mr. Justice Jackson, concurring).[99] For it "cannot [be]", as observed by Mr. Chief Justice Vinson in the main opinion, "that before the Government may act, it must wait until the *putsch* is about to be executed, the plans have been laid and the signal is awaited. If [the] Government is aware that a group aiming at its overthrow is attempting to *indoctrinate its members* and to *commit them to a course whereby they will strike when the leaders feel the circumstances permit,* action by the Government is required"—and the opinion also refers to striking "when they thought the time was ripe" or when "the time had come for action" (341 U. S. at 509, 510, 511 [emphasis added]).

The distinction which this Court drew in *Dennis* between the kind of speech which may and the kind which may not be punished consistently with the First Amendment is not the distinction, which petitioners pose, between the advocacy of immediate violence to

[99] See also *Gitlow* v. *New York*, 268 U. S. 652, 671–672, holding that it was not necessary that the accused in that case, to be punishable under the substantially identical state statute there involved, should have advocated "immediate" acts of violence.

effect this Government's overthrow and the advocacy of future violence to that end; the proper distinction is rather the distinction between *advocating* violence (whether present or future) and mere *discussion* of, *theorizing* about, *abstract approval* of, or *prophesying* concerning the use of violence as a political weapon. See 341 U. S. at 501–502 (main opinion); *id.* at 545–547 (Mr. Justice Frankfurter, concurring); *id.* at 570–572 (Mr. Justice Jackson concurring). The true differentiation between the type of speech which is constitutionally punishable by Congress and that which is constitutionally immune was epitomized in Mr. Chief Justice Vinson's observation that the Act "is directed at advocacy, not discussion" (at 502).[100]

In the case at bar, the judge, using appropriate language of his own, carefully instructed the jury on all aspects of this issue. He correctly defined the necessary terms, drew the proper distinctions between the kinds of speech forbidden by and the kinds permissible under the Act, and explained with precision just what it was that the indictment charged the defendants with having conspired to do (Tr. 13752–13756; *United States* v. *Schneiderman,* 106 F. Supp. at 934–935).[101] He explained, for example, that "the word 'advocate' means to urge or 'to plead in favor of; * * * to support, vindicate, or recommend publicly * * *'" (Tr. 13752; 106 F. Supp. at 934). He

[100] *Cf.* Mr. Justice Frankfurter's observation that "[t]hroughout our decisions there has recurred a distinction between the statement of an idea which may prompt its hearers to take unlawful action, and advocacy that such action be taken" (341 U. S. at 545).

[101] The entire instructions are set forth at Tr. 13728–13773 and also at 106 F. Supp. 927–941.

charged that "[t]he holding of a belief or opinion does not constitute advocacy"; that "the Smith Act does not prohibit persons who may believe that the violent overthrow and destruction of the Government of the United States is probable or inevitable from expressing that belief"; and that "[p]rediction or prophecy is not advocacy" (*ibid.*). And he emphasized that (*ibid.*)—

> Any advocacy or teaching which does not include the urging of force and violence as the means of overthrowing and destroying the Government of the United States is not within the issue of the indictment here and can constitute no basis for any finding against the defendants.

The judge also stressed the necessity that the jury, to convict any one of the accused, find that he personally "had the specific intent to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit" (Tr. 13748, 13753–13754, 13766–13767; 106 F. Supp. at 933, 935, 939).

Since these instructions correctly explained what the jury had to find to convict, and carefully differentiated what would not suffice, it was proper for the judge, in his discretion, to decline to give petitioners' requested instruction defining "advocacy" in terms of "incitement", particularly in view of the ambiguous and potentially misleading character of that term.[102]

[102] The special reliance of petitioners Richmond and Philip Connelly on the First Amendment (Br. No. 8) because of their connection with the *Daily People's World* is treated, *infra*, pp. 109–115.

B. *The "clear and present danger" test is satisfied*

Petitioners next argue (Br. 259–274) that the trial judge made no proper finding of the existence of a "clear and present danger" that the substantive evil at which the Smith Act is directed would result from their advocacy and teaching. They contend that the judge erroneously treated the finding which the jury made—that petitioners each had the specific intent to bring about the forcible overthrow of the Government "as speedily as circumstances would permit"[103]—as though this were the equivalent of the requisite "clear and present danger" finding (Br. 260–261).

It is possible that the trial judge did regard the jury's finding of the existence of this specific intent on petitioners' part as sufficing, without more, to satisfy the "clear and present danger" test. See *United States* v. *Schneiderman,* 102 F. Supp. 87, 96; *United States* v. *Schneiderman,* 106 F. Supp. 906, 923. If so, his "clear and present danger" finding would have been deficient, since such a finding entails a taking into account of objective conditions prevailing in the nation and in the world during the relevant period, in addition to the subjective element of the accused's intent. *Dennis* v. *United States,* 341 U. S. at 510–511. It is to be noted, however, that in both of his opinions the judge made specific reference to the portion of the main opinion in *Dennis* (341 U. S. at 508–511) affirming the finding of the requisite "clear and

[103] The jury were instructed that they had to make this finding in order to convict (Tr. 13748, 13753–13754, 13766–13767; 106 F. Supp. 933, 935, 939). See *supra,* p. 86.

present danger" in that case (at 510–511). It is possible, therefore, that what the judge intended to do was to accept, so far as the objective element of the "clear and present danger" is concerned, the *Dennis* finding on that point as his own.

In any event, it makes no real difference whether Judge Mathes' conception of the precise nature of the "clear and present danger" test was correct or not,[104] For, as *Dennis* held, the question of whether or not the test is satisfied in a given case is in the nature of a "question of law" (341 U. S. at 511–515). The consequence is that, even where there is no question as to the correctness of the trial judge's conception of the nature of the test, but only as to the correctness of his finding, the Court of Appeals must make an independent appraisal of the issue, and this Court, should the case reach it, will similarly give independent consideration to the question. 341 U. S. at 510–511. This being so, it is evident that at the present stage of the case the "clear and present danger" determination must be made *de novo* by this Court, and it is immaterial whether that decision was cor-

[104] Mr. Justice Holmes himself, the coiner of the "clear and present danger" phrase (*Schenck* v. *United States*, 249 U. S. 47, 52), appears in a later reference to the test to have given quite as much prominence to the subjective element of intent as Judge Mathes did in the case at bar. *Abrams* v. *United States*, 250 U. S. 616, 627 (dissenting). Judge Mathes relied to a considerable extent on the latter statement of Mr. Justice Holmes in the formulation of his own conception of the character of the "clear and present danger" test in this case (see *United States* v. *Schneiderman*, *supra*, 106 F. Supp. at 923).

rectly made in the first instance by the trial court or the Court of Appeals.[105]

That "the requisite danger" (*Dennis,* 341 U. S. at 510) in fact existed is not, we submit, to be doubted; there was during the three-year period immediately preceding the return of the indictment, 1948–1951, a sufficiently "clear and present danger" of the occurrence of the evil at which the Smith Act is aimed (the overthrow or attempted overthrow of the Government by force and violence) to warrant petitioners' conviction for having conspired to engage in the proscribed advocacy and teaching to that end. The question is not alone how imminent, in some absolute sense, the forcible overthrow or attempted overthrow of the Government was during that period as a consequence of petitioners' activities. The Government need not wait to take punitive action against the advocacy of its violent overthrow until such overthrow, or an attempt thereat, becomes a literal "present danger". *Dennis* v. *United States,* 341 U. S. at 509–510. Nothing in the Constitution requires the Government to subject itself to a real risk of its own forcible destruction; the contrary view would make of that instrument a "suicide pact."[106] The true question is, rather, "whether the gravity of the 'evil', discounted by its

[105] Here, the Court of Appeals appears not to have made any independent finding on the "clear and present danger" issue, the court having shared with the trial judge the view that the jury's verdict included an implicit finding of "clear and present danger" (R. 127–128).

[106] *Terminiello* v. *Chicago,* 337 U. S. 1, 37 (Mr. Justice Jackson, dissenting).

improbability, justifies such invasion of free speech as is necessary to avoid the danger." [107]

This Court, in holding the "clear and present danger" test to have been satisfied in *Dennis*, observed that "[t]he mere fact that from the period 1945 to 1948 petitioners' activities did not result in an attempt to overthrow the Government by force and violence is of course no answer to the fact that there was a group that was ready to make the attempt" (341 U. S. at 510). This point is of equal pertinence to the case at bar. For the petitioners here were members of, and leaders of, that same group. Theirs was the same conspiracy. If junior in rank to the *Dennis* petitioners,[108] they nevertheless served in the same army and were engaged in the same mission. Nor were the "world conditions" of 1945–1948, to which the Court in *Dennis* referred (341 U. S. at 511), of a less "inflammable nature" in 1948–1951. "[I]f the danger was clear and present in 1948", as Mr. Justice (then Circuit Judge) Harlan, speaking for the Second Circuit, observed in *United States* v. *Flynn*, 216 F. 2d 354, 367, certiorari denied, 348 U. S. 909, "it can hardly be thought to have been less in 1951, when the Korean conflict was raging and our relations with the Com-

[107] This formulation of the "clear and present danger" test by Chief Judge Learned Hand, writing for the Second Circuit in the *Dennis* case, 183 F. 2d 201, 212, was specifically adopted in the main opinion in this Court, the opinion noting that the test as thus formulated succinctly takes into consideration the relevant factors and "relates their significances" (341 U. S. at 510).

[108] With the arguable exception of petitioner Schneiderman (see *supra*, pp. 58–65).

munist world had moved from cold to hot war." [109]

A final facet of petitioners' "clear and present danger" argument is that the "clear and present danger" test cannot be met in their case because, they say, they never had the "power to bring about the evil" of violent overthrow (Br. 261–262, 272–273). They base their argument on the Court's remark in *Dennis* that "[w]here there is doubt as to the intent of the defendants, the nature of their activities, or *their power to bring about the evil,* this Court will review the convictions with the scrupulous care demanded by our Constitution" (341 U. S. at 516 (emphasis added)). Petitioners, however, have certainly mistaken the purport of the Court's remark. It may be assumed that as individuals they were without the power to bring about the evil at which the Smith Act strikes. But, as individuals, so were the defendants in the *Dennis* case. The point is that petitioners, like the *Dennis* defendants, were parties to and, in high degree, leaders of the same "highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these [*Dennis*] petitioners, felt that the time had come for action" (341 U. S. at 511). The fact that the particular echelons of the conspiracy at which petitioners operated were a

[109] In 1950, Congress enacted the Internal Security Act, 64 Stat. 987, Section 2 of which contains the findings of Congress as to the nature and purposes of the Communist movement abroad and in this country during a large part of the period covered by this indictment. See *Carlson* v. *Landon*, 342 U. S. 524, 535–536; *Galvan* v. *Press*, 347 U. S. 522, 529; Brief for Respondent, *Communist Party* v. *Subversive Activities Control Board*, Oct. Term, 1955, No. 48, pp. 209 *et seq.*

step or two removed from that of the *Dennis* defendants is of no consequence. Petitioners played their roles in the upper rungs of the Party's hierarchy; some of them can properly be called national leaders, and all were important and active in the top spheres of the California branch of the Party. In their hands lay the power to direct and utilize the forces and resources of the conspiracy in that state when the proper time should come. "It is the existence of the conspiracy which creates the danger" (*Dennis*, 341 U. S. at 511), coupled with the positions of leadership which petitioners held.[110]

II

THE TRIAL JUDGE CORRECTLY INSTRUCTED THE JURY AS TO THE MEANING OF "ORGANIZE" AS USED IN THE ACT AND INDICTMENT

The trial judge, in instructing the jury as to the nature of the charge contained in the "organizing"

[110] It is unnecessary, in our view, to consider petitioners' contention (Pet. 29–35; Br. 219–220, 249–250) that the Court of Appeals' judgment is based on an "erroneous premise" as to the legal effect of the 1948 codification of the Smith Act as 18 U. S. C. 2385. The court in its opinion (see R. 109–117) expressed the view that the omission of the Smith Act's conspiracy clause from the new code section, as the result of which conspiracies to violate that section have since been required to be prosecuted under the general conspiracy statute (18 U. S. C. 371), which requires the commission of an overt act, resulted in certain significant changes (in addition to the new requirement of proof of an overt act) in the legal considerations applicable to Smith Act conspiracy prosecutions. The merits of this view need not be discussed, for we have assumed, with petitioners, that the 1948 codification had no effect other than to bring into play in subsequent Smith Act conspiracy prosecutions the general conspiracy statute with its requirement of an overt act. It should be noted that since July 24, 1956, proof of an overt act has again become unnecessary. See Public Law 766, 84th Congress, which, *inter alia*, restored the conspiracy clause to 18 U. S. C. 2385.

branch of the indictment (see *supra*, p. 6), explained that (Tr. 13756; 106 F. Supp. at 935)—

> * * * the charge of the indictment in effect is that the defendants knowingly and wilfully conspired to organize and help to organize the Communist Party as a means or vehicle to advocate and teach the necessity and duty of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances would permit. Thus the issue in this case, insofar as the Communist Party is concerned, is whether the defendants or any of them conspired with others to organize or help to organize and use the Communist Party for such advocacy and teaching as charged.

Then the judge gave the following instruction, the correctness of which is challenged by petitioners (Br. 274–288), as to the meaning of the term "organize" (Tr. 13756; 106 F. Supp. at 935–936):

> The verb "organize", as used in the Smith Act and the indictment, includes the recruiting of new members and the forming of new units, and the regrouping or expansion of existing clubs, classes and other units of any society, party, group or other organization.[111]

Petitioners contend that this explanation of the meaning of the term "organize", as used in the Smith Act, is contrary to the "ordinary", "natural" mean-

[111] Similarly, paragraph 3 of the indictment had charged (see *supra*, p. 7) that as part of the conspiracy petitioners and their co-conspirators "would cause to be organized groups, clubs, sections, and district, state, and national units of said [Communist] party * * * and would recruit, and encourage recruitment of, members to said party, concentrating on recruiting persons employed in key basic industries and plants" (R. 2-3).

ing of the term (Br. 281–284) and inconsistent with the congressional purpose in enacting the clause of the Act in which the term is contained (Br. 278–281). They argue that a society is organized "when at a formal convention a constitution is adopted and officers and committees elected" (Pet. 44; see Br. 281–283); that "the Communist Party [was] organized when it c[ame] into being and [was] endowed to function as the Party" (Pet. 44), and that this event (see Appendix A, *infra*, pp. 145–147), occurred in 1945 (Pet. 45–46; Br. 274–275). Accordingly, they say, the trial judge should have instructed the jury that the three-year statute of limitations barred their conviction under the "organizing" branch of the indictment, or that he should otherwise have withdrawn this part of the charge from the jury's consideration (Pet. 45–46; Br. 277–78, 288).

1. In the first place, even if petitioners' contention were sound, it could make no difference in this case. The indictment charged petitioners with having conspired to violate the Smith Act by advocating and teaching the duty and necessity of overthrowing the Government by force and violence *and* by organizing as the Communist Party a society of persons who so teach and advocate (R. 2; see *supra*, p. 6), and the jury were instructed that, to convict, they must find that petitioners had conspired to violate the Act in *both* the ways alleged (Tr. 13739–13740, 13747; 106 F. Supp. 930–931, 934). The verdict thus represents a finding by the jury that petitioners conspired in both those ways.

Hence, it is not true that, as petitioners argue, "the jury may have convicted petitioners for conspiring to 'organize', even if they found no conspiracy to 'advocate and teach'" (Br. 288), and such cases as *Stromberg* v. *California*, 283 U. S. 359, 367–368, *Williams* v. *North Carolina*, 317 U. S. 287, 292, and *Cramer* v. *United States*, 325 U. S. 1, 36, n. 45, on which petitioners rely (Br. 288), have no application here. Those cases establish the general principle that where a jury's verdict may be based on any one of several possible findings of fact, some of which would be sufficient to support the verdict, but others of which would for some reason be insufficient, the verdict must be set aside because of the impossibility of being sure that it is based on one of the good grounds. Here, on the other hand, we know from the verdict that the jury found that petitioners conspired to "advocate and teach" violent overthrow as well as to "organize" as the Communist Party a group who so teach and advocate. The consequence is that, as observed by the Court of Appeals (R. 119), it is immaterial whether the "organizing" clause of the indictment was or was not barred by limitations. Cf. *Haupt* v. *United States*, 330 U. S. 631, 641, n. 1; *Todorow* v. *United States*, 173 F. 2d 439, 445, n. 9 (C. A. 9), certiorari denied, 337 U. S. 925.

2. But the argument is unsound in any event. The short answer to it is that the organization of a group such as the Communist Party is a continuing process. No one, indeed, recognizes this fact better than the Party itself. The State or District leader is commonly referred to as the "District Organizer" (see

Appendix A, *infra*, p. 166). The second in command is called the "Organizational Secretary" for the State, County, or other unit, as the case may be (see Appendix A, *infra*, pp. 166–167). The organizational structure of the Party is constantly undergoing modification, subdivision, revamping, and regrouping.

This very case provides an abundance of evidence that the organizing of the Party is not the static, once-done-and-forever-accomplished event for which petitioners contend, but rather a continuous process which goes on as the Party, day by day, seeks ever to improve its position, regroup its forces, and strengthen its structure as it prepares itself for effective action when the call comes. Thus, for example, petitioner Spector, in 1936, according to witness Saunders, "came out from New York to become the county organizer in San Francisco" (A. 12); some fourteen years later, in 1950, the record identifies him as the "southern division organizer" for Los Angeles County (A. 292, 293). In 1945, petitioner Lima was the Party "field organizer * * * working out of [the] San Francisco office" (A. 12); three years later, in 1948, he is still (or again) identified in the record as the "Field Organizer" for the same County organization (Ex. 315, p. 1). In 1947, petitioner Carlson, who has been up to that time busy with Party work in California, is suddenly transferred to Wisconsin as "an organizer from the national committee", commissioned to give the Wisconsin Party "new life, a sort of shot in the arm"—that is to say, "to organize us a little better, see to it that we became more militant, and to get us to working better" (*supra*, p. 56; A.

276–277); two years later, in 1949, we find him back in California as the Los Angeles "county organizer", with presumably the same or a similar function there (*supra*, pp. 57–58; A. 84). In 1943, petitioner Kusnitz was a "section organizer" in the Bronx, New York (*supra*, p. 37; A. 317, 318); in 1949, she is "organizational secretary" of the "Midtown Division", Los Angeles County. (*supra*, pp. 39–40; A. 356). In the summer of 1948, petitioner Fox was instrumental in organizing the "Haskell [S]ection" of the Party in San Francisco in the interest of "better Communist Party organization" (*supra*, p. 42; A. 284). In the same year we find the "Southside section" of Los Angeles County being split up into smaller sections for organizational reasons, with petitioner Dorothy Healey Connelly, in her capacity as "county org. sec." (Organizational Secretary), addressing the meeting at which this change is effected (*supra*, p. 52; A. 289–290). Some six years previously, in or about 1942, the California State organization itself had been split off for organizational reasons from former "District 13", which had embraced several western states in addition to California (Appendix A, *infra*, pp. 165–166). Beginning about 1947, all Party clubs were broken up into "squads" consisting of not less than three and not more than five persons each, this organizational change being part of the process whereby the Party prepared to "go underground" (Appendix A, *infra*, pp. 173–174). The establishment of the elaborate "three-system" as described by witness Lautner (Appendix A, *infra*, pp. 171–172)—this to constitute the Party's "underground" component—

is a further example of the Party's ever continuing process of organizing itself to meet new conditions.

Congress was not concerned, as petitioners suppose, with the procedural mechanics by which a paper organization is initially established; what it was concerned with is continuing activity to recruit and indoctrinate members and the gradual organization of them into units and branches of an ever more efficient, but sinister, working group. Accord: *Wellman* v. *United States*, 227 F. 2d 757, 765 (C. A. 6), petition for certiorari pending, No. 9, Misc. By separately referring in § 2 (a) (3) of the Smith Act (*supra*, p. 5) to persons who organize or help to organize "any society, group, or assembly of persons * * *", Congress sought to reach the leaders of such groups. Petitioners' construction of "organize" would in effect obliterate to a major degree this clause of the Act. For under their interpretation, this provision, enacted in 1940, could never, had it not been for the fortuitous 1944–45 interlude of the Communist Political Association (see *supra*, pp. 144–147), have been applied to the leaders and organizers of the Communist Party, since the Party was initially organized in 1919 (Appendix A, *infra*, p. 139), some 21 years before the enactment of the Smith Act. Yet the legislative history shows beyond any doubt that the organization at which that Act was particularly aimed was the Communist Party.[112]

To avoid the principle that statutes will not be given an interpretation which frustrates a clear legis-

[112] See, particularly, Hearings before Subcommittee No. 2 of the House Committee on the Judiciary, 74th Cong., 1st sess., on H. R. 4313 and H. R. 6427, May 22, 1935, Serial 5, p. 3 *et seq.* The bills referred to were early versions of the bill which became the Smith Act. See also 84 Cong. Rec. 10454.

lative purpose, petitioners assert that Congress modeled the Smith Act after the California Criminal Syndicalism Act, under which, they say, the word "organize" was construed by the California courts as embracing only the initial creation of an organization (Br. 279–280).[113] Accordingly, they contend, it

[113] Petitioners cite three inferior-court California decisions on the point (Br. 279–280). To the extent that these decisions might be deemed authorities even in California for the broad view that the task of "organizing" a society or group of persons can under no circumstances, or in no sense of the term, be considered as continuing beyond the initial creation date, their pertinent observations are clearly *dictum*. The earliest of the three, *People* v. *Thurman*, 62 Cal. App. 147 (1923), held merely that a defendant who had done nothing more than publish and distribute propaganda leaflets advocating criminal syndicalism could not be said to have "assisted in organizing" the International Workers of the World; the court mentioned in its opinion that there was "no evidence that the printed propaganda resulted in adding a single recruit to the cause for which appellant labored" (at 153), and added, in a further *dictum*, that even if the accused's efforts "had resulted in adding one or more members, such increment of membership would not have amounted to 'organizing' the [I. W. W.]" (at 152–153). The second case, *People* v. *Thornton*, 63 Cal. App. 724, 726–727 (1923), held merely that the act of procuring a single new member for the I. W. W. did not constitute "assisting in organizing" that organization; the court, citing the *dictum* of the earlier *Thurman* case, *supra*, observed in its opinion that the organization "was completely organized and in existence at and prior to that time" (at 727). The relevant language in the third case, *People* v. *Ware*, 67 Cal. App. 81, 84 (1924), appears also to be *dictum*, *viz.*, that the act of bringing new members into an organization already "organized and in existence" does not constitute "assisting in organizing" such a group, the *Thurman* and *Thornton* cases being cited for that view.

It will be noted that each of these cases, even including their *dicta*, was concerned solely with the question of whether the bringing of a new member or members into an organization constitutes assisting in organizing the group. The challenged instruction at bar, on the other hand (see *supra*, p. 93), dealt with—in addi-

must be presumed that Congress intended to use the word "organize" in the Smith Act with the meaning given to it by the California courts—citing *Willis* v. *Eastern Trust & Banking Co.*, 169 U. S. 295, 304–308; *James* v. *Appel*, 192 U. S. 129, 135; and *Joines* v. *Patterson*, 274 U. S. 544, 549 (Br. 280–281). But in *Carolene Products Co.* v. *United States*, 323 U. S. 18, 26, this Court, while noting that these cases "have established under suitable conditions" the "general rule that adoption of the wording of a statute from another legislative jurisdiction carries with it the previous judicial interpretations of the wording", cautioned nevertheless that "It is a presumption of legislative intention, however, which varies in strength with the similarity of the language, the established character of the decisions in the jurisdiction from which the language was adopted and the presence or lack of other indicia of intention."

The legislative history of the Smith Act contains no indication that Congress was aware of the California decisions (see fn. 113, *supra*, p. 99) relied upon by petitioners. More important, that history affirmatively shows that the draftsmen of the Smith Act were using as their principal model the New York Criminal Anarchy Act,[114] which was involved in *Gitlow* v. *New*

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tion to "the recruiting of new members"—"the forming of *new units*, and the regrouping or expansion of existing *clubs*, *classes and other units*" [emphasis added].

[114] While the Smith Act does have numerous resemblances to the California Criminal Syndicalism Act of 1919 (Stats. 1919, c. 188; General Laws, Act 8428), this is true, generally speaking, only to the extent that the California Act is itself similar to the earlier (1902) New York Act (Laws 1902, c. 371; Penal Law, § 161).

York, 268 U. S. 652.[115] Since the "organize" clause of the New York statute[116] has not been judicially construed to give the narrow interpretation urged here by petitioners, there is no basis for presuming that Congress intended to adopt such a meaning by con-

[115] The Smith Act, Title I of the Alien Registration Act of June 28, 1940, 54 Stat. 671, was added to the bill which became that Act on the floor of the House as an amendment offered by Congressman Smith of Virginia (84 Cong. Rec. 10451–10452, 10454). Mr. Smith stated that Congressman McCormack of Massachusetts was "really the author of the language" (*id.* at 10452; cf. 86 Cong. Rec. 9032). By this he meant that the language of the proposed amendment (set forth at 84 Cong. Rec. 10451–10452) was substantially the same as the language of H. R. 4313 introduced in 1935 in the 74th Congress. At that time, Mr. McCormack appeared before a House Judiciary Subcommittee in support of a shortened version of H. R. 4313, H. R. 6427, stating that the bill represented one of the recommendations of the Special (McCormack-Dickstein) Committee on Un-American Activities (Hearings before Subcommittee No. 2 of the House Committee on the Judiciary, 74th Cong., 1st sess., on H. R. 4313 and H. R. 6427, May 22, 1935, Serial 5, p. 2). In answer to a question as to whether the bill was drawn "along the same lines as the New York State statute," Mr. McCormack answered (*id.*, p. 6):

> Exactly; only in more simplified form. We have eliminated a number of elements which are contained in most State statutes.

And in the discussion at the hearing, repeated reference was made to *Gitlow* v. *United States*, *supra*, which involved a prosecution under the New York statute (*id.* at pp. 5–7, 11–12, 37, 41, 102–103, 107, 110, 126). See also Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 76th Cong., 1st sess., on H. R. 5138 [the bill which became the Act, *supra*, whose Title I is the Smith Act], April 12 and 13, 1939, Serial 3, pp. 83–85.

[116] The clause reads as follows: "[Any person who:] 4. Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such doctrine [criminal anarchy]. [is guilty of a felony, etc.]" (N. Y. Penal Law, § 161 (4)).

sciously modeling the Smith Act after the New York statute. Accordingly, the trial judge was correct in interpreting the word "organize" in a realistic manner so as to carry out the purpose of Congress.

There is, finally, no warrant for petitioners' contention (Br. 281–284) that the meaning which the judge attributed to the term is alien to its common or dictionary definition. Webster's *New International Dictionary* (2d ed., unabridged) defines "organize" as meaning:

> 1. To furnish with organs; to give an organic structure to. * * *
>
> 2. To arrange or constitute in interdependent parts, each having a special function, act, office or relation with respect to the whole; to systematize; to get into working order; as, to *organize* an army; to *organize* recruits.
>
> * * * * *

Similarly, Funk & Wagnalls' *New Standard Dictionary* (1947) defines the term as meaning:

> 1. To bring into systematic connection and cooperation as parts of a whole, or to bring the various parts of into effective correlation and cooperation; as, to *organize* the peasants into an army.
>
> * * * * *

As observed by the court below (R. 118)—

> * * * If one started out to organize the 25th Army with nothing more than the order creating the entity, organization would not be complete simply because the headquarters had been put together and the general officers and

> staff officers selected. The bare cadres of the regiment would not be sufficient. Recruitment, formation of units, completing officer personnel, regrouping of personnel in different units and expansion of various units to the prescribed or desired strength would be necessary. * * *

Moreover, the trial judge's explanation of the term as including "the recruiting of new members and the forming of new units, and the regrouping or expansion of existing clubs, classes and other units * * *" (*supra*, p. 98) falls squarely within the foregoing dictionary definition as including "bring[ing] the various parts of into *effective* correlation and cooperation" (*supra*, p. 102; emphasis added). Making effective the correlation of the various parts of the Party was the precise purpose of the recruiting, regrouping, and expansion to which the judge referred. That was the purpose of the recurring organizational activities evidenced in this case (*supra*, pp. 96–98; Appendix A, *infra*, pp. 138–139, 144–147) which the Party ceaselessly carries on as it day by day seeks to make itself an "effective" instrument for the accomplishment of that for which it was created and toward which it aspires, *viz.*, successful violent revolution. As petitioner Yates herself testified, her duties as State "Organizational Secretary" consisted among other things (see A. 394), of "helping to organize recruiting drives in order to build the Communist Party and make it a bigger organization" (A. 393).

III

THE EVIDENCE AMPLY SUPPORTS THE VERDICT

Petitioners contend (Br. 124–186; Br., No. 7, pp. 24–34; Br., No. 8, pp. 31–95; Pet. 47–76) that the evidence is insufficient to support the jury's verdict that each of them "knowingly and wilfully joined the conspiracy alleged in the indictment with the specific intent to overthrow the Government of the United Sates by force and violence as speedily as circumstances would permit" (Pet. 47). "Unless membership and officership in the Communist Party alone establish participation in the illegal conspiracy charged herein and the requisite specific intent", they say, "there is absolutely no basis for" their conviction (Pet. 48). We submit that petitioners err and that their convictions are amply sustained by the evidence.

Petitioners' summary of the evidence (Br. 13–90; Br., No. 7, pp. 3–22; Br., No. 8, pp. 4–25) is far from adequate. Apart from its errors of omission, much of it is devoted to charges and insinuations that the testimony of the Government's witnesses—which, as observed by the Court of Appeals, "was in essentials uncontradicted" (see *supra*, p. 9, fn. 9)—was in large part either consciously false or the product of faulty memories. In the case of petitioner Yates, who alone of the petitioners elected to take the witness stand, the summary is scarcely more than a recapitulation of her own testimony (see Br. 13–47). But, as this Court has emphasized, issues of credibility are for the triers of the facts, not for reviewing courts, to resolve (*On Lee* v. *United States*, 343 U. S. 747,

757–758),[116a] and "[t]he verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States,* 315 U. S. 60, 80.

The evidence adduced by the Government is summarized in the statement, *supra,* at pp. 9–69, and in Appendix A, *infra,* pp. 138–177. It fully supports the jury's determination that the conspiracy charged in the indictment existed during the period referred to in the indictment (1948–1951), and that each petitioner was a knowing member thereof with the requisite specific intent. That the Communist Party, throughout this period, advocated and taught the duty and necessity of overthrowing the Government of the United States by force and violence was proved, here as in the prior Smith Act cases, by overwhelming evidence (see Appendix A, *infra,* pp. 149–164). There was likewise clear and convincing proof that each petitioner knew of this teaching, and that he conspired with his codefendants and the other alleged coconspirators (the *Dennis* defendants), to advance and propagate this teaching through the vehicle of the Party, and that each intended the advocated action, *i. e.,* violent overthrow of the Government, to be accomplished "as speedily as circumstances would permit."

The prosecution's proof did not consist, as petitioners argue (Br. 145–146, 159–160; Pet. 48), merely

[116a] The jury were cautioned to "carefully scrutinize" and "[weigh] with great care" each witness' testimony in the light of "motive", possible "self-interest", the circumstances surrounding his joining and leaving the Party, and possible "hostility" towards the accused (Tr. 13733–5; 106 F. Supp. at 929). The decisions cited by petitioners do not support their argument (Br. 130, fn. 71a) that these cautionary instructions were not adequate.

of evidence that they were members and officers of the Communist Party.[117] In the first place, petitioners were shown to have been, not simply members and officers of the Party, but the long-time California *leaders* of that organization, an organization which, the evidence showed, imposed the most rigid discipline—a "truly iron" discipline—on all its members from top to bottom, and which tolerated no doctrinal deviation from its basic tenets, least of all from its teaching on the necessity of force and violence to achieve its ends. See Appendix A, *infra*, pp. 168–170. Not even the deviation known as "left sectarianism"—the advocacy of what the Party deemed a too early, or premature, use of violence (*supra*, pp. 16, 17–18, 41, 55 [fn. 66], 82 [fn. 96])—was tolerated. Indeed, that and its opposite twin, "right deviationism", whose "Browderite" disciples would "anesthetize" the "revolutionary potential" of the Party, were shown by the evidence to have been dealt with with ruthless severity by the Party and their adherents excoriated and expelled, regardless of how "good, sound party members" they might otherwise have been (*supra*, pp. 64–65; Appendix A, *infra*, pp. 169–170).

This fact of petitioners' undoubted Party leadership, when considered in conjunction with the Party's highly disciplined character and its extreme secrecy (see Appendix A, *infra*, pp. 168–174), suffices to show that each of the petitioners had the knowledge and the intent with which they were charged. It would be too much to suppose, as petitioners' argument as-

[117] If this had been the case, it is evident that the prosecution's case, instead of taking months to present, could have been presented in a single day.

sumes, that a Party member could rise from the ranks to membership on the National Board (petitioner Schneiderman) or National Committee (petitioners Schneiderman, Lima, and Yates[118]), or to the California State Chairmanship (Schneiderman), or to the second highest State office of Organizational Secretary (Yates and Stack), without having come to know along the way, and to know very well, one of the most central and most emphasized of all the Party's teachings—the duty and necessity of overthrowing this Government by force—and without personally intending and desiring that this basic and fundamental aim of the Party be realized "as speedily as circumstances would permit."

Hardly more believable is the supposition that Party members could advance, after years of vigilantly-scrutinized apprenticeship, to such lesser but still highly important positions in the Party hierarchy as State "security head" (Lambert), State Secretary[119] (Carlson), County Chairman (Healey), County Organizational Secretary (Dobbs), County Educational Director (Steinberg), Division Organizer[120] (Spector), Division Organizational Secretary (Kusnitz), and

[118] In Yates' case, alternate membership.

[119] *I. e.*, for Wisconsin (see *supra*, p. 56); Carlson was also, at a later date, the "county organizer", or leader, of Los Angeles County (see *supra*, p. 58).

[120] *I. e.*, of the Southern Division of Los Angeles County, the most recent position held by Spector. The "Division" is the unit next below that of County, it being used in certain counties only (see Appendix A, *infra*, p. 166). The "Organizer" of a unit is the leader of that unit. Earlier, in 1936, Spector had held the even higher-ranking position of "county organizer" for San Francisco County (*supra*, p. 28).

"Maritime Section" Organizer (Fox), without acquiring that same knowledge and having that same intent and desire. The same is true of a member who, like petitioner Richmond, was able to rise to the executive editorship, *i. e.*, editorship-in-chief, of the *Daily People's World*, the Party's sole western newspaper, serving the entire West Coast area, and of one who, like petitioner Philip Connelly, achieved the "Los Angeles editorship" of that organ. The inference that each of these individuals possessed the requisite knowledge and intent is the product of common sense and common experience, together with the detailed proof of the nature, structure, and objectives of the Communist Party. The jury would, therefore, have been warranted in making that inference on the basis of petitioners' high and active positions in the Party hierarchy.

But the Government proved far more than that petitioners were the California leaders of an organization of the type which the Party was shown to be. It adduced, besides, a wealth of additional evidence—personal acts, statements, and teachings by petitioners themselves, as well as acts, statements, and teachings done or uttered by others in their presence—which in its cumulative effect was far more than sufficient to warrant the conclusion that each petitioner possessed the necessary knowledge of the Party's violent objective and the specific intent to achieve that aim. No useful purpose would be served in re-summarizing that evidence here. It is set forth in the Statement, *supra*, at pp. 11–69, collated according to the individual petitioners. In reviewing this proof it should not be for-

gotten that it is unnecessary for individuals to "meet and shake hands to be co-conspirators" (*United States* v. *Mesarosh*, 223 F. 2d 449, 455 (C. A. 3), pending on certiorari, No. 20). That is to say, "[p]articipation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collocation of circumstances'" (*Glasser* v. *United States*, 315 U. S. 60, 80). On that basis, the proof that each petitioner knowingly and with the required intent participated in the conspiracy charged was sufficient by any standard to sustain the verdicts. There are numerous statements advocating violent revolution made by most of the petitioners, or by other Party members in their presence, or in books from which they taught or which they urged on others.

Petitioners Richmond and Connelly:—The fact that petitioners Richmond and Connelly's role in the overall conspiracy was primarily that of editing the *Daily People's World*, the Party's West Coast newspaper, does not, as they argue in their separate brief (Br., No. 8, pp. 99–104), insulate them from the consequences of their having knowingly joined the conspiracy. They attempt to picture their activity as merely the exercise of freedom of the press, but it is plain that proof that a conspirator's "party role, in part, was that of editor and publisher rather than of gunman" does not provide him with any cloak of immunity from the consequences of his knowing participation in an illicit conspiracy to which his newspaper activities are merely an adjunct. *United States*

v. *Lebron*, 222 F. 2d 531, 536 (C. A. 2), certiorari denied, 350 U. S. 876.

Petitioners Richmond and Connelly were definitely proved to be members of the conspiracy. The *Daily People's World* (commonly referred to simply as the *People's World*) is the successor (since 1938) of the *Western Worker*, the Party's former "Western Organ" (Ex. 621, p. 2; Ex. 659 [see A. 18]). Richmond was selected to be its managing editor by the "Central [*i. e.*, National] Committee" of the Party in 1937 (Ex. 636, p. 1; A. 10). More recently, and for many years, he has been its "executive editor", *i. e.*, editor-in-chief (A. 113, 367, 405–406). Connelly in recent years has been its "Los Angeles editor" (A. 406). Witness Saunders, a former member of the District Committee for "District 13" (which included California among other states), testified that the "editor or the assistant editor or the business manager" of the *Daily People's World* was "invariably" present "at all district meetings" and that the paper "was discussed at every district meeting" (A. 5). And whenever the District Committee "arrived at any decision on political or organizational matters," there would "automatically * * * be either an editorial or some pertinent article about that particular subject in the next issue" (*ibid.*). One or more representatives of the paper, including Richmond and Connelly, commonly attended California State Board meetings, including the most secret (A. 224–225, 227–228, 367–368, 373–374). Its "articles * * * reflected the attitude and the policy of the Communist Party on the various subjects of which

they spoke"; "[o]therwise, they wouldn't have been printed" (A. 18).

The Party has regularly exercised discipline, even to the point of expulsion, over any functionaries of the *Daily People's World* who deviate from the Party line (A. 184–186, 313–315, 342–343, 584–587). The paper has been used as a basis for educational discussions at Party meetings (A. 25, 37) and Party meetings have regularly been held for the purpose of raising funds for it and to increase its circulation (A. 34, 95–96, 98, 234–235, 253–255, 292–294). The three-section application form used in recruiting new Party members (Tr. 1553–1554) used to contain as one of its sections a subscription form for the *People's World* (Ex. 389 [A. 589]). Petitioner Dobbs has compared its role to that of *Pravda*, the official organ of the Russian Communist Party, during the pre-Revolutionary period in that country; like *Pravda*, he said, the *People's World* fulfils the function of "disseminating information and instructions" to the "members of the revolutionary movement" (A. 191; and see *supra*, pp. 45–48).

The importance attached to the *People's World* in achieving Party goals is further reflected by the observation made by petitioner Schneiderman in discharging an editor of the Party's predecessor paper, the *Western Worker*, because of his "dilettante attitude": The "ultimate aim of the party", said Schneiderman, "and the reason for the publication of the *Western Worker*" was to "bring about a revolution in the United States and seizure of power by the Communist Party"—aims which, he said, were poorly served by the editor's "dilettante attitude" and "petty

bourgeois" tendencies (A. 343; see also *supra*, pp. 63–64).

In these circumstances, it is irrelevant that the *Daily People's World* did not and does not, any more than does its East Coast counterpart, the *Daily Worker*, or than did the pre-Revolutionary Bolshevik organ *Pravda*, publish overt appeals to its readers to overthrow the Government by force. The high strategic importance of this newspaper to the Party's over-all objective was its usefulness in "sow[ing] the seed of Marxist-Leninist understanding among the masses" (Ex. 2, p. 826), "blow[ing] the smoldering fire of the people's resentment" (*id.*, p. 819) against real or fancied grievances in order to attract potential recruits to the Party, and, in general, attempting to gain the "sympathy of the masses" (Appendix A, *infra*, p. 155) so as to facilitate the Party's task of forcible seizure of power once "the revolutionary tide" is high and the time is ripe for action (Appendix A, *infra*, p. 161).

The very first of the *Conditions of Affiliation to* [sic] *the Communist International* provided that—

> Everyday propaganda and agitation must bear a genuinely Communist character. All organs of the press belonging to the party must be edited by reliable Communists who have proved their loyalty to the cause of the proletarian revolution.[121]

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[121] As quoted in Lenin's *The Communist International* (Ex. 514, p. 202 [A. 566]). As noted at Appendix A, *infra*, p. 170, fn. 50, the *Conditions of Affiliation* were adopted at the Second World Congress of the Communist International.

Without a "Communist press that will enlist all the masses", said Lenin, "preparation for the dictatorship of the proletariat will be impossible."[122]

That the Party in the United States similarly regards its press as a vital weapon in the attainment of its revolutionary objective may be seen from the 1946 report of National Board member and alleged co-conspirator John Williamson to the Party's National Committee (Ex. 2, p. 826):

> Our press * * * helps plow the ground, sow the seed of Marxist-Leninist understanding among the masses. Without such work, our Party will not be able to speed the growth of a class-conscious, united working class, schooled in struggle and theory, and led by a strong Communist Party.[123]

Further, said Williamson, the Party press is useful as a "blacksmith's bellows" capable of (*id.*, p. 819)—

> * * * blow[ing] the smoldering fire of the people's resentment into a fighting flame * * * that will sweep America from coast to coast.

"A paper is what we need above all," said Lenin; it should be "the starting point of all our activities, the first practical step towards creating the organization we desire * * *." Quoting these words of Lenin in the April 1949 issue of its theoretical organ, *Political Affairs*, the Party similarly emphasized the

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[122] *Id.*, p. 174 (A. 566).

[123] *Cf.* the statement on "The Role of the Press Director" in *A Handbook for Club Officers* (Ex. MF, pp. 15, 16), a booklet written by petitioners Yates and Carlson (A. 387–388): "Press Director[s] should * * * [k]eep a list of all new readers (with addresses and occupations) to be worked with as sympathizers and developed into Party members, with special attention to concentration workers." For the meaning of the term "concentration workers", see Appendix A, *infra*, pp. 174–177.

importance of its press in this country in the winning of its objectives (Ex. 265, p. 75).[124]

In sum, the fact that Richmond and Connelly had risen to their respective positions of trust and prominence on the *Daily People's World* (the Party's only newspaper for the entire West Coast), considered in the light of the Party's proven goal of ultimate violence, the great strategic importance which it attached to this newspaper, and the iron discipline which it exercised over all Party functionaries on the paper's staff, justified the inference that these petitioners were well aware of the nature of the Party and that they personally shared the intent and desire that its revolutionary end be achieved "as speedily as circumstances would permit." Both, in addition, were proved to be active attendants at committee meetings, including those conducted under conditions of strictest secrecy, of the State and County Committees of the Party (*supra*, pp. 66–69). Subject only to the authority of the National Committee, these committees laid down the "line" for the whole Party in California and controlled the entire Party apparatus, including the curriculum of its schools and classes (Appendix A, *infra*, pp. 147–148). Adduced, besides, was a variety of other evidence (see *supra*, pp. 65–69), all cumulatively tending to show that Richmond and Connelly had the requisite knowledge and specific

[124] In 1938, the Tenth Convention of the American Communist Party described the Party press as "the indispensable instrument for realizing the present objectives and historic aims of the working class movement" (Ex. J, p. 17 [Tr. 1248–1249]). The "rapid expansion" of the Party's newspapers—including the *Daily Worker* and the *Daily People's World*—was said to be "[o]f equal importance and urgency with the recruitment of new members" (*ibid.*).

intent. Accordingly, their positions as editors no more immunize them from the consequences of their knowing complicity in the conspiracy than did the functioning in similar positions—on the *Daily Worker*—of the *Dennis* petitioners Davis and Gates.

IV

THE COMMISSION OF OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY, WITHIN THE LIMITATIONS PERIOD WAS ADEQUATELY PROVED

Among the overt acts allegedly committed "[i]n furtherance of" the conspiracy and "to effect the objects thereof" (R. 4–6) were two, Nos. 13 and 16 (R. 5), which petitioners concede to have occurred within the limitations period, *i. e.*, during the three years preceding December 21, 1951, the date of the indictment's return (Br. 105). They contend, however, that neither of these acts was of the type contemplated by the overt act requirement of the conspiracy statute [125] because neither, they say, can be properly said to have been committed in furtherance of the conspiracy or "to effect [its] object" within the meaning of the statute (Br. 187–215).

Before proceeding to consider the two specific overt acts in question in the light of petitioners' contention, it should be emphasized that these were not the only acts in furtherance of the conspiracy that were shown by the evidence to have occurred within the statutory period. On the contrary, the record is filled with in-

[125] 18 U. S. C. 371 (*supra*, p. 4). As we have pointed out (see fn. 110, *supra*, p. 92), since July 24, 1956, by virtue of Public Law 766, conspiracy to violate the Smith Act has again become punishable (as it was prior to 1948) without the necessity of proof of an overt act.

stances of such acts, the sufficiency of which for purposes of satisfying the statutory overt act requirement (had they been alleged in the indictment) we do not suppose petitioners would question. For example, the evidence shows that petitioners Yates and Schneiderman jointly prepared one of the study outlines used in the "Marxist Institutes" which the Party conducted during the years 1949–50 (see *supra*, p. 18, and Appendix A, *infra*, pp. 161–164).[126] Petitioner Lambert, for another example, presided over the 1950 expulsion proceedings involving witness Sutherland, at which was discussed the possibility of an early "revolution by bullets" as a result of "the Korean crisis" (*supra*, pp. 36–37). Again, petitioner Carlson, in 1949, in his capacity as "county organizer" for Los Angeles County, visited a class of one of the "Marxist Institute" schools as an observer of its proceedings (*supra*, pp. 57–58). For similar incidents, all occurring within the statutory period, see *supra*, pp. 18–19, 21–22, 31, 33, 39–40, 49, 53, 58, 67–68.

But even as to the two overt acts which were alleged as such and proven, and whose sufficiency is the subject of petitioners' present challenge, that challenge cannot be sustained.

Each of the overt acts in question consisted of the attendance at and participation in an admittedly Party-sponsored meeting by one of these petitioners. Both meetings were in the nature of "rallies" honoring the memory of Lenin, the hero of the Russian Revolution. These "Lenin Memorial Meetings", as they were called, were "open" meetings, not limited

[126] Yates, in fact, so admitted in her testimony at the trial (A. 396–397).

to Party members, and the evidence shows that they were heavily attended.[127] One of the meetings took place in January 1949 (A. 207), and the other in January 1950 (A. 203).

With respect to the 1949 meeting, the proof was that petitioner Steinberg was the Chairman of the affair and in the course of the evening "made several speeches." Sponsored by the Party's "Education Department" for Los Angeles County, and honoring the "25th anniversary of the death of V. I. Lenin, chief founder of the Soviet Union", the meeting was intended to "serve primarily as a protest against" the then-pending *Dennis* trial in New York City. Petitioner Dobbs was the principal speaker at the rally. See *supra*, p. 21.

The 1950 meeting (A. 203–207; Ex. 159A, p. 10) was similarly sponsored by the Education Department of the Los Angeles County Party (A. 204). Petitioner Schneiderman, the principal speaker at the affair, spoke on "the China situation"; among other things, he charged that this Government's sending of assistance to the Chinese Nationalist Government was part of a "cold blooded plot to make war on the Chinese people" (Ex. 159A, p. 10). The evening's program included "an appeal for funds" (A. 203).

These overt acts were in furtherance of the conspiracy and "to effect [its] object", within the fair intendment of the conspiracy statute. It was at such meetings as these that the Party was augmented and strengthened through the recruitment of new members

[127] The evidence indicates that there were in the neighborhood of 1,600 persons at each (A. 203, 207).

(Tr. 3763–3768). It was through such "front" issues and propaganda—such "bait" (A. 221)—that the Party sought to interest outsiders in its program, with the objective of winning, if not new members (A. 116–117, 161–163, 199–201, 220–221; Tr. 1584–1587, 4622), at least "passive allies", *i. e.*, "people who won't oppose them when they make the move and strike for power" (A. 200). Certainly it was an overt act in furtherance of the conspiracy to participate in public eulogies for the chief architect and guiding genius of the Russian Bolshevik Revolution, the revolution regarded by Communists everywhere as the "pilot" revolution to be duplicated at the earliest propitious time in this and the other countries of the world, and at the same time to join in a public registration of "protest" against the trial of the Party's leaders, all of whom were proved to have been co-conspirators in the same conspiracy with the accused at bar. The great majority of the so-called Marxist-Leninist classics—the principal medium through which the Party indoctrinates its members and recruits in its program of violent revolution—either were written by Lenin or purport to expound his teachings (see Appendix A, *infra*, pp. 151–162). In addition, the participation in a Party-sponsored rally at which an appeal is made for funds with which to finance the continuation of the Party's activities, the conspiratorial character of which is as forcefully demonstrated as it was in this case, is an act in furtherance of those activities and of the conspiracy which they evidenced.

Petitioners' assumption (Br. 188–189, 202–208) that in order for participation in such a Party-sponsored meeting to fulfill the overt act requirement of the statute the meeting's speakers must make overt appeals to those in attendance to overthrow the Government by force and violence is plainly without warrant. For the advocacy of such forcible overthrow is the very offense—the substantive offense—charged in the indictment as the object of the conspiracy. It has long been established that the overt act which the Government must prove in a conspiracy prosecution need not be "the very crime that is the object of the conspiracy." *Pierce* v. *United States,* 252 U. S. 239, 244; *United States* v. *Rabinowich,* 238 U. S. 78, 86. Indeed, it is settled that the act need not be criminal in character at all, and taken purely by itself it may be wholly innocent. *Braverman* v. *United States,* 317 U. S. 49, 53, and cases cited. Certainly, the overt act in a conspiracy trial need not partake of the character of the "act" in a treason prosecution which must, in itself, be an act of aid and comfort to the enemy. *Kawakita* v. *United States,* 343 U. S. 717, 736–9.

Hence, petitioners' repeated assertion that the meetings here involved were "lawful" meetings (Br. 202–208) is quite without relevance. The pertinent fact is that they showed that the conspiracy which the evidence established was, in the words of the Court of Appeals, still very much in the "field of action" (R. 126). More than this is not required. As observed in *Carlson* v. *United States,* 187 F. 2d 366, 370 (C. A. 10), certiorari denied, 341 U. S. 940, "[t]he overt act

merely manifests that the conspiracy is at work," and that it is neither a mental project still resting solely in the mind nor a fully-completed operation no longer in existence. As we have pointed out (*supra*, pp. 115–116), there was ample evidence of overt activity by the petitioners during the limitations period (1948 to 1951), and there can be no possible claim that the conspiracy had either not yet begun to manifest itself objectively or had already ended.

V

PETITIONERS WERE NOT DEPRIVED OF A FAIR TRIAL BY THE TRIAL JUDGE'S REFUSAL TO GRANT THEIR MOTIONS FOR A CONTINUANCE AND FOR A MISTRIAL

A. *The judge appropriately exercised his discretion in declining to grant the motion for a continuance based on the publication of the "Philbrick articles"*

From January 20 to February 7, 1952, the Los Angeles *Times* published in serial form Herbert Philbrick's *I Led Three Lives,* an account of this *Dennis* witness' experiences in the Communist Party as a confidential informant of the F. B. I. This series of articles, which was also simultaneously syndicated in other newspapers throughout the country, contained no mention of any of these petitioners. The closest that any of the articles came to even indirectly referring to petitioners was a reference in one article to the so-called "notorious Communist 11"—*i. e.,* the eleven defendants in the *Dennis* case—whose names appear in the instant indictment (not, however, in association with any such descriptive phrase) as alleged co-conspirators with these petitioners. On January 21,

1952—ten days before the date set for the commencement of the trial of this case (February 1)—petitioners moved for a continuance of the case to a date 60 days after the terminal date of the Philbrick articles. The motion was denied without opinion. Petitioners contend (Br. 296–298, 106–107) that the refusal to grant the requested continuance deprived them of a fair trial.

The granting or refusal of a continuance is a matter resting within the sound discretion of the trial court. *Avery* v. *Alabama,* 308 U. S. 444, 446, and cases cited. Petitioners, as the court below observed, "had ample protection against an inclusion of a juror affected by such a newspaper discussion by the voir dire and the use of peremptory challenge" (R. 133). Indeed, that the trial judge did not abuse his discretion in refusing a continuance, and that petitioners' concern as to the possibility of attaining an impartial jury as a consequence of the Philbrick articles was ill-founded, appeared affirmatively at the *voir dire* examination. All members of the jury panel were specifically questioned, at petitioners' request, as to whether any of them had either "read" or "seen" the articles in question (Tr. 61, 112). Only one panel member, Venireman Flanagan responded in the affirmative (Tr. 61),[128] and she was not among those finally selected to sit on the jury (Tr. 122–123, 179). Thus it affirmatively appears that as of the date of the *voir dire*

[128] Venireman Flanagan stated that she had seen the invitations to read the articles, as carried in the paper which syndicated them, but that she had not read any of the articles themselves (Tr. 61).

examination, February 1, 1952, no panel member who eventually sat on the jury had either read or seen any of the articles. While the articles continued for a few days beyond that date, *i. e.*, until February 7, 1952 (see *supra*, p. 120), that fact has no present relevance in the light of Judge Mathes' emphatic and repeated admonitions to the jury, commencing from the very beginning and continuing several times daily throughout the trial, that they were not to read anything about the case in the newspapers or listen to anything about it on radio or television, and that they were not to permit themselves to be influenced, in arriving at their verdicts, by anything whatever other than the evidence as it unfolded in the courtroom (see, *e. g.*, Tr. 25–26, 28, 29–31, 32–33, 53–54, 60, 104, 134–135, 138–140, 211–212).[129] It must be presumed that these exhortations were heeded by the jury. For only on the assumption that jurors heed the instructions of the trial judge is jury trial possible. Cf. *Holt* v. *United States*, 218 U. S. 246, 250–251; *Opper* v. *United States*, 348 U. S. 84, 95; *Finnegan* v. *United States*, 204 F. 2d 105, 110 (C. A. 8), certiorari denied, 346 U. S. 821.

[129] In emphasizing to the panel members the importance of deciding the case solely on the basis of the evidence, the judge pointed out to them that "if we could try these cases upon what the jury reads in a magazine or hears over television or sees in a newsreel or reads in the paper, it wouldn't be necessary for you to come down at all. We could just ask you to mail in your ballot as to whether or not the defendant is guilty or innocent. But that isn't competent evidence. * * * In order to have a jury that is absolutely impartial, we have to have people who can * * * decide the issue, not upon something they heard or read outside the court room, but upon the evidence adduced here in a lawful and competent manner" (Tr. 30–31).

B. *The refusal to declare a mistrial on the basis of the publicity given to the release by a Senate Committee of an FBI memorandum purporting to set forth "documentary proof" that the Communist Party teaches forcible overthrow of the Government was a proper exercise of discretion in the circumstances of this case*

Equally without merit is petitioners' contention (Br. 289–296, 107–111) that they were entitled to have a mistrial declared because of the publicity given to the release by a Senate committee of an FBI memorandum purporting to set forth "documentary proof" that the Communist Party teaches forcible overthrow of the Government. The pertinent facts are as follows:

On July 29, 1952, the Internal Security Subcommittee of the Senate Judiciary Committee made public a printed pamphlet in the form of a Committee Print, 82d Cong., 2d sess., entitled *Documentary Proof that the Communist Party, U. S. A., Teaches and Advocates the Overthrow and Destruction of the United States Government by Force and Violence.*[130] Contained in the pamphlet was a memorandum which the Director of the Federal Bureau of Investigation had a month previously, in June 1952, delivered to the Senate Subcommittee at its request. The FBI memorandum, which contained no mention whatever of any of these petitioners, consisted in the main of quotations from writings of Marx, Engels, Lenin, and Stalin and from published comments on those writings by American Communist

[130] Excerpts from the pamphlet (Ex. NF) appear at pp. 301–306 of the appendix to petitioners' brief in the Court of Appeals, which they have also filed with the Clerk of this Court.

leaders. These quotations and comments had all previously been received in evidence in this case.[131] The release of the pamphlet was attended by considerable newspaper, radio, and television publicity throughout the country, the FBI memorandum being referred to in some of the newspaper reports as a "long secret FBI report."

On the morning following the release of the pamphlet, the trial being then in its closing stages,[132] petitioners moved for a mistrial on the ground that the publication of the FBI memorandum "on the very eve of the case going to the jury" was "a deliberate attempt of the Department of Justice to influence the outcome of this trial" (Tr. 13519).[133]

The trial judge, while recognizing that it was "regrettable that the report was released for publication at an unfortunate time from the standpoint of all concerned with this trial" (*United States* v. *Schneiderman*, 106 F. Supp. 906, 926), refused to accede to petitioners' contention that the incident called for the automatic termination of the six-months'-old trial and the declaration of a mistrial. In the course of his thorough consideration of the

[131] See Tr. 13519, 13530, 13650–13651, 13654, 13665.

[132] The presentation of evidence had been concluded, and counsel were presenting their closing arguments to the jury.

[133] From the beginning, petitioners have made charges and insinuations that the release of the pamphlet by the Senate Subcommittee at the particular time it was released with reference to this trial was intentional on the part of the Subcommittee, and that its release at that time was with the connivance of the prosecution (Tr. 13526, 13652, 13667, 13680). These insinuations are repeated in their brief to this Court (Br. 108, 289, 290–292). They are, however, completely lacking in record support.

arguments advanced in support of the contention (Tr. 13519–13535, 13649–13719), he observed that, even assuming that one or more of the jurors had read or heard about the FBI memorandum in question, it contained nothing that was news to them, since the various quotations on which it was based were all in evidence and thoroughly familiar to them (see Tr. 13655, 13657–13658, 13660–13662, 13665–13666); that such statements, for example, as that

> [P]roletarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one,

which the memorandum attributed to Stalin, could hardly have had any great effect on the jury, since they had "heard that read here several times in the last six months" (Tr. 13665). He said that, while "[o]f course, we would like to have nothing mentioned in the press or anywhere else that could possibly influence even the community while a case such as this is under way", it must nevertheless be recognized that "the world can't stop while the trial goes on" (Tr. 13667). He pointed out to defense counsel that "you gentlemen for the defense have brought out time and time again that two members of the Federal Bureau of Investigation sit there at the government counsel table throughout this trial", and asked whether they, defense counsel, "suppose[d that] any member of the jury would be naive enough to believe that J. Edgar Hoover, the head of the Federal Bureau of Investigation, has contrary ideas to what was being urged by the government" (Tr.

13669). "I ask you again", he said, "do you suppose it could possibly be any surprise to this jury that the Federal Bureau of Investigation contends that the Communist Party so advocates [*i. e.*, the violent overthrow of the Government]" (Tr. 13665). "When the matter was presented yesterday morning", the judge further remarked, "I thought there was possibly something new. I hadn't seen the [newspaper] article, but when I read the article, I didn't see anything at all in it that any person in this court room who attended this trial wouldn't recognize as having been read here, not once, but several times. * * * And the thought occurred to me that of all the people in this community who would be least affected by that article, the jury would be and the counsel and the court in this case who sat here for several months hearing that sort of thing read, and to whom it would be no news whatever" (Tr. 13666).

While for these reasons the judge was convinced that the incident in question did not warrant the declaration of a mistrial, he nevertheless expressed his willingness, if petitioners desired that he do so, to question the jurors as to whether any of them had either read or heard anything about the FBI memorandum or its contents, and, if so, whether any juror felt in the slightest degree unable to base his verdict in the case solely and exclusively on the evidence adduced in the courtroom (Tr. 13710, 13712, 13714, 13716–13717).[134] The judge's plan was that, in the

[134] The judge observed that "[t]he question isn't whether they have heard it. It is what effect it has had upon them. * * * [The purpose of the inquiry would be] to invite them in effect to dis-

event that any juror or jurors indicated an inability to decide the case solely on the evidence, he or they would be excused from further participation in the case and be replaced by the necessary number of alternate jurors, of whom there were four available (Tr. 13717).

Petitioners, however, firmly rejected this offer. They insisted that only a single inquiry be made, *viz.*, whether any juror had read or heard about the matter; if the answer should be in the affirmative, they maintained, the judge would be required automatically to declare a mistrial (Tr. 13716, 13717–13719). When the judge declined to accede to this suggestion, the matter was dropped,[135] and the judge made no mention of it in his instructions other than to repeat the admonition which had been given the jury throughout the trial, that they were under a sworn duty to base their verdicts solely upon the evidence in the case as adduced in the courtroom (Tr. 13729, 13732, 13770; *United States* v. *Schneiderman*, 106 F. Supp. at 927, 928, 940).

In the light of the actual contents of the FBI memorandum and the circumstances attending its publication as just set forth, petitioners' contention that the trial judge had no choice but to declare a mistrial is, we submit, clearly untenable. As observed by the

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qualify themselves if they feel they cannot go ahead with an open mind as heretofore and decide the case solely upon the evidence produced here in the court room" (Tr. 13713).

[135] The judge observed to defense counsel: "I do not think we should conduct the inquiry if you do not wish the second question put. There is no point in it that I can see. It would be merely a disturbing influence upon the jury at this stage" (Tr. 13718).

court below, "[u]nquestionably, the matter [contained in the memorandum] was of immense public interest and was within the public domain. The media of publication had a right to publish" (R. 134). Jurors' knowledge of publicity adverse to a defendant does not create any presumption of prejudice on their part against him. *Holt* v. *United States*, 218 U. S. 245, 250–251; *Finnegan* v. *United States*, 204 F. 2d 105, 110 (C. A. 8), certiorari denied, 346 U. S. 821; *United States* v. *Moran*, 194 F. 2d 623, 625 (C. A. 2), certiorari denied, 343 U. S. 965; *United States* v. *Katz*, 173 F. 2d 116, 117 (C. A. 3); *Shushan* v. *United States*, 117 F. 2d 110, 115–116 (C. A. 5), certiorari denied, 313 U. S. 574. It was most unlikely, furthermore, for the reasons stated by the trial judge (*supra*, pp. 125–126), that any juror, even assuming that some of them had read or heard about the memorandum, would have been influenced by it to the extent of an actual impairment of his ability to reach a verdict solely on the basis of the evidence adduced in the courtroom. The most that petitioners could reasonably ask was that the judge do what he offered to do, *i. e.*, make to the jury the compound inquiry to which we have referred (*supra*, p. 126). The single inquiry on which petitioners insisted—whether any juror had read or heard of the memorandum—was not the test of ability to continue to serve as a juror; the test was rather whether, if any juror had heard of it, he was influenced by it to such an extent as to interfere with his ability to decide the case on the evidence alone. For this reason there was no warrant for petitioners' refusal to ac-

quiesce in the judge's suggested disposition of the matter.

The very same contention which petitioners here advance was also made, unsuccessfully, in *United States* v. *Flynn*, 216 F. 2d 354, 374–375 (C. A. 2), certiorari denied, 348 U. S. 909. That case involved the same pamphlet. It is true that it affirmatively appeared in *Flynn*, as the result of questioning the jury, that no juror had read the pamphlet (*id.* at 374), but, as the Second Circuit's opinion points out, there was no indication that the members of the jury had not read the newspaper reports concerning it, since the trial court had specifically excluded from its inquiry the question of whether any of them had read these reports (*ibid.*, note 14). Circuit Judge (now Mr. Justice) Harlan observed that, even though the pamphlet itself mentioned two of the *Flynn* defendants by name (*id.* at 374, 376), the fact that the newspaper reports contained no reference to the *Flynn* case or to any of the defendants therein, together with the strong charge by the trial court that the jury must not be influenced by anything except the evidence in the case, provided ample guarantee that no defendant had suffered prejudice by the publicity given to the pamphlet's release (*id.* at 374, note 14).

Each of the factors to which Mr. Justice Harlan pointed as affording assurance that no substantial right of any of the accused had there been prejudiced is likewise present here. The publicity attending the pamphlet's release contained no reference either to this case or to any of these defendants, and the trial

judge stressed that the jury must not be influenced by anything except the evidence in the case (see *supra*, pp. 122, 127). Indeed, the pamphlet itself did not mention any of these petitioners, although it did, as we have said, refer to two of the *Flynn* defendants. And here, as we have pointed out (*supra*, pp. 126–127), we have the additional fact of the trial judge's offer, which petitioners rejected, to query the jury as to whether any of them had heard or read anything at all about the matter in question and, if so, whether they still felt able to decide the case on the evidence alone.

Petitioners' argument that they were entitled to nothing short of an immediate declaration of a mistrial is bottomed on the premise that all of the organs of government, which have a general duty to publish facts affecting the public interest (particularly during such a period as the Communist aggression in Korea in 1952), were required to remain silent with respect to all aspects of the Communist question during their trial. There is no warrant for any such assumption.[138]

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[138] The situation at bar was totally unlike that in *Delaney* v. *United States*, 199 F. 2d 107 (C. A. 1), cited by petitioners (Br. 293, 297–298). There, for several months immediately preceding the accused's trial the newspapers and other media of publicity in the city of trial printed day-to-day "flamboyant, front-page" news accounts of testimony given before a congressional subcommittee inquiring into the very issues on which the accused was tried, with the result that, in the words of the First Circuit, "[i]t is fair to say that, so far as the modern mass media of communication could accomplish it, the character of Delaney was pretty thoroughly blackened and discredited as the day approached for his judicial trial on narrowly specified charges" (*id.* at 111). The situation in *Delaney* was further aggravated by the fact that the testimony heard by the subcommittee "ranged far beyond matters relevant to the pending indictments", including such matters as

Judge Mathes was clearly correct, we submit, in concluding that "[t]here has been no showing that the jury at bar did not function as a jury should function, free from all extraneous influence, in the best tradition of this outstandingly characteristic institution of the Anglo-American legal system. And the presumption is that the jurors faithfully performed their official duties." *United States* v. *Schneiderman*, 106 F. Supp. 906, 926.

VI

PETITIONER SCHNEIDERMAN'S PROSECUTION WAS NOT BARRED BY THIS COURT'S 1943 DECISION SETTING ASIDE HIS DENATURALIZATION

In his separate brief, petitioner Schneiderman erroneously argues (Br., No. 7, pp. 34–65) that his prosecution and conviction in this case were barred, under the principle of *res judicata*—or collateral estoppel, as it is more accurately referred to when it is sought to be applied to a situation like that here involved [137]—by this Court's 1943 decision in *Schneid-*

allegations of bankruptcy, larceny, embezzlement, and fraud by the accused occurring prior to his appointment as collector of internal revenue, all of which was given full play in the various media of publicity (*id.* at 110). *Delaney*, in brief, involved a "trial by newspaper" (*id.* at 113) occurring on the very eve of the accused's judicial trial. It is evident from what has been said in the text that nothing remotely resembling that was here involved.

[137] "The general rule of *res judicata* applies to repetitious suits involving the same cause of action. * * * The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or

erman v. United States, 320 U. S. 118, in which the Court set aside the decree of denaturalization previously entered against him in that proceeding.

The determination of fact which the jury made against Schneiderman when they returned their verdict in the present case was not inconsistent with what this Court determined in the earlier *Schneiderman* case. The only question involved there was whether the Government had sustained its burden of proving by "clear, unequivocal, and convincing" evidence that Schneiderman was not, on the date of his naturalization in 1927, and had not been during the preceding five-year period, attached to the principles of the Constitution and well disposed to the good order and happiness of the United States (320 U. S. at 121, 135, 158–159). The issue before the jury in the instant case, on the other hand, was whether Schneiderman had been, from December 1948 to December 1951, a knowing member of a conspiracy to teach and advo-

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demand, but as to any other admissible matter which might have been offered for that purpose.' * * *

"But where the second action between the same parties is upon a different cause or demand, the principle of *res judicata* is applied much more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but 'only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.' Since the cause of action involved in the second proceeding is not swallowed by the judgment in the prior suit, the parties are free to litigate points which were not at issue in the first proceeding, even though such points might have been tendered and decided at that time. * * * In this sense, *res judicata* is usually and more accurately referred to as estoppel by judgment or collateral estoppel." *Commissioner* v. *Sunnen*, 333 U. S. 591, 597–598.

cate the duty and necessity of forcibly overthrowing this Government and to organize as the Communist Party a society of persons so teaching and so advocating.

Not only are the critical time-periods in the two cases some 20 years apart,[138] but, what is more important, this Court made very clear in *Schneiderman* that it was not passing upon, because it found it unnecessary to pass upon, the question of whether the Communist Party at that time taught and advocated, or had ever taught and advocated, the forcible overthrow of this Government (320 U. S. at 147–148, 153). "This Court has never passed upon the question whether the Party does so advocate", said the Court, "and it is unnecessary for us to do so now" (320 U. S. at 148). "We do not say", the Court further emphasized, "that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence. But that is not the issue here" (*id.* at 153). The issue, said the Court, was whether Schneiderman had been shown, by the strict standard of proof which the Court held necessary, to have been *personally* lacking in the essential requisites for naturalization during

[138] In addition to the proliferation of Communist literature since 1927, referred to in fn. 139, *infra*, p. 134, we now have the advantage of all the history which began with the German-Soviet pact in 1939, and particularly of the activities of the Communists, both here and abroad, since the close of hostilities in World War II. Our general knowledge of, and experience with, Communist actions and policies is far more ample today than in 1927, or even 1943.

the five-year period ending in 1927. It is true that the Court, in making this determination, examined portions of the Marxist-Leninist literature in existence during that period [139] because Schneiderman had testified that he subscribed generally to their philosophy and principles (see 320 U. S. at 127, 136–137). And it is true that on the basis of this examination a majority of the Court felt it to be a "tenable conclusion" that the Party, "in 1927" (*id.* at 157),—

> * * * justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of

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[139] The literature published after 1927, the Court pointed out, was "entitled to little weight" by virtue of its having been published "after the critical period" (320 U. S. at 151–152; see also *id.* at 147). The Court thus virtually excluded from its consideration the entire body of Communist literature published in the 12-year period between the date of Schneiderman's naturalization and the commencement of the denaturalization proceedings in 1939. The jury in the case at bar, on the other hand, had the advantage of being able to consider not only the pertinent literature of the latter period but also the literature of the period of equal duration which elapsed between the institution of the denaturalization proceedings and the trial of the instant indictment. In addition, of course, this Court did not have before it such strongly probative evidence of what the Party teaches as the curricula of its schools and classes in the post-World War II period (see Appendix A, *infra*, pp. 149–164), all of which was available to and considered by the jury in this case. Regardless, therefore, of whether the conclusions of the majority in *Schneiderman* as to the nature of the Party's teachings concerning force and violence were or were not "naive" (as Mr. Justice Jackson, concurring in *Dennis* v. *United States*, 341 U. S. 494, 569 [note], described them), they are at least "of yesterday" (*Carlson* v. *Landon*, 187 F. 2d 991, 997 (C. A. 9), affirmed, 342 U. S. 524).

peculiar circumstances constitutional or peaceful channels were no longer open.

But the Court was at pains to emphasize that it was not holding, and did not wish to be understood as believing, either that this was "the most probable" "interpretation of the Party's attitude toward force and violence" or that Schneiderman's testimony in that case was "acceptable at face value" (*id.* at 158). Rather, the Court said (*id.* at 158–159),—

> * * * We hold only that where two interpretations of an organization's program are possible, the one reprehensible and a bar to naturalization and the other permissible, a court in a denaturalization proceeding * * * is not justified in canceling a certificate of citizenship by imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation.[140]

The narrowness of the issue decided in the 1943 *Schneiderman* case is thus apparent. The Court did not decide that the Communist Party did not then teach and advocate, or that it had never taught and advocated, the forcible overthrow of the Government. Nor did the Court decide that such teaching and advocacy was not, or that it had never been, a tenet of Marxism-Leninism. It did not even decide, affirmatively, that Schneiderman was, during the relevant 1922–27 period, attached to the principles of the

[140] For overt acts of Schneiderman established by the evidence in this case, showing his thorough understanding and complete acceptance of the Party principle of the duty and necessity of overthrowing this Government by force and violence, see *supra*, pp. 58–65.

Constitution and well disposed to the good order and happiness of the United States. All that was decided was the negative fact that the Government had failed to prove, by the requisite standard of "clear, unequivocal, and convincing" evidence, that Schneiderman was not so attached and so disposed during the critical years preceding his naturalization. Cf. *Lewis* v. *Frick*, 233 U. S. 291, 302.

There is thus no inconsistency whatever between what the *Schneiderman* case decided and what the jury's verdict against him in this case established, *viz.*, that from 1948 to 1951 he was a knowing party to a conspiracy of the type charged in the indictment. Consequently, the principle of *res judicata*, or collateral estoppel, did not bar Schneiderman's prosecution. For this Court's decision in the *Schneiderman* case was not "a determination favorable to" him "of the facts essential to [his] conviction" in the instant prosecution—the only proper test of that principle's applicability in a given situation. *Sealfon* v. *United States*, 332 U. S. 575, 578–579.[141]

[141] See also, to the same effect, *United States* v. *Williams*, 341 U. S. 58, 63–65; *Commissioner* v. *Sunnen*, 333 U. S. 591, 597–598.

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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APPENDIX A

THE HISTORY, AIMS, TECHNIQUES, ACTIVITIES, AND TEACHINGS OF THE COMMUNIST PARTY OF THE UNITED STATES (INCLUDING THE CALIFORNIA PARTY)

ORIGIN AND EARLY HISTORY OF THE PARTY

The Communist Party of the United States was first organized in September 1919 (Ex. 622, p. 16) following the successful 1917 Bolshevik Revolution in Russia. In the course of its growth, it has been in a continuous process of organization and reorganization, adopting different names from time to time. Originally "an underground Party", it organized what it called the "Workers Party" in December 1921 "as its legal expression" (William Z. Foster, *From Bryan to Stalin* [Ex. 145], p. 295 [A. 521][1]). "The Communist Party itself, however, continued to exist as an underground Party, it being commonly referred to as 'Number one', while the Workers Party was 'Number two', until the underground Party was finally liquidated at the end of 1923" (*ibid.*).[2] In 1927, the Party changed its name to the "Workers' Communist Party" (Ex. MM–1, p. 93), and in 1929 it again changed its name—to the one it now bears (*ibid.*; Tr. 11414). Finally, for a short period in 1944–1945 it once again changed its name, this time to the "Communist Politi-

[1] Where an exhibit or a part of an exhibit which we cite is also reproduced in the printed record, the page or pages of the printed record at which it appears will be added in brackets following the exhibit-reference itself.

[2] That, however, the Party later renewed its "underground" activities—particularly in the 1930's (see *infra*, pp. 139–140) and again following World War II (see *infra*, pp. 170–174)—is clear from the evidence in this case.

cal Association" (see *infra*, pp. 144–145). Following this interlude, it changed its name back to the "Communist Party of the United States" (*infra*, pp. 145–147), by which name it has been known ever since.

Several of these changes in name have been associated with factional struggles within the Party, with the victorious ousting the vanquished for some claimed deviation from the principles of "Marxism-Leninism",[4] and with an accompanying reorganization of the Party. Thus, Party leaders Jay Lovestone and Benjamin Gitlow, together with all their adherents, were ousted in 1929 following the "Open Letter" from the Communist International condemning their "Right errors" and the theory of "American 'exceptionalism'" (Ex. 622, pp. 19–20; Ex. 83, p. 806), and Earl Browder was expelled in 1945 in conjunction with the reorganization of the Party following the period of the "Communist Political Association" (see *infra*, pp. 144–147).

THE 1930's AND THE YOUNG COMMUNIST LEAGUE

Many of the petitioners started their Communist Party careers in the 1930's or earlier as members of the Young Communist League, the former name of the youth affiliate of the Communist Party (Ex. 485, p. 8; A. 258).[5] Many of the League's meetings were

[3] The Party, in its official theoretical organ, *Political Affairs*, has referred to September 1, 1949, as its "[t]hirtieth [a]nniversary" (Ex. 622, p. 1).

[4] For a summarization of some of the more pertinent of these principles, see *infra*, pp. 149–164.

[5] Petitioner Schneiderman was a member of the League in the 1920's (see *supra*, p. 59), and petitioners Steinberg (A. 246–247), Stack (A. 213–219), Spector (A. 243–244), Lambert (A. 262–264), Dobbs (A. 10–11, 258), Healey (Dorothy Healey Connelly) (A. 243, 263), Carlson (A. 11, 246, 262–264), and Richmond (A. 211–212) were all officers or members of or otherwise active in the League in the 1930's.

conducted in strictest secrecy because, as witness Rosser explained, the League "was a secret organization underground conspiring at that time" (A. 264; see *supra*, pp. 27–28). And what it was "conspiring" about was explained by the same witness. "The major concern of the Communist Party" in the early 1930's, he testified, "was to bring about a revolution"—"the violent overthrow of this Government" (A. 262).

THE SAN FRANCISCO GENERAL STRIKE OF 1934

For a period of four days extending from July 16 to July 19, 1934, the City of San Francisco and the entire surrounding Bay area were immobilized by a general strike.[6] The theoretical organ of the Communist Party of the United States, at that time called *The Communist*, contained an article in its October 1934 issue (described on the cover as the "Special Strike Issue") claiming credit for the Party for the bringing about of this strike (Ex. 738, pp. 985–1004

[6] For details concerning this strike, see the article on the *San Francisco General Strike* in Funk & Wagnalls' *The New International Yearbook* for 1934, pp. 674–675. The strike was the climax of a longshoremen's strike which, commencing May 9, 1934, "soon spread to the whole Pacific coast and completely crippled the operations of all ports" (*id.*, p. 674). It has been described as "[o]ne of the most significant labor disputes in the American industrial annals" (*ibid.*). General Hugh Johnson, the NRA Administrator, speaking at the scene of the strike, called it "civil war" and "bloody insurrection" (*id.*, p. 675). Though the original longshoremen's strike, out of which the general strike grew, was an A. F. of L. affair (*id.*, p. 674), President Green of the A. F. of L. disavowed the general strike, stating that "the American Federation of Labor neither ordered the strike nor authorized it" (*id.*, p. 675).

[see A. 607–610]).[7] The article, entitled *The San Francisco Bay Area General Strike*, was written by Sam Darcy, who ten years later was to be described by the Party's National Chairman, William Z. Foster, as one of the "40 leading Party members" (A. 575).

"We are discussing", the article begins, "the largest single strike in the history of the country" and "the first general strike in which * * * our Party participated as a Party" (Ex. 738, p. 985 [A. 607]). After pointing out that "in a revolutionary situation" the object of a general strike is to "seiz[e] the industries and eliminat[e] all capitalist control" (*ibid.* [A. 608]), the article states that "[t]he San Francisco General Strike" was "incomplete" due to the Party's failure to "stop the bourgeois newspapers" and to induce "the workers in the communication systems * * * to join the strike" (*id.*, pp. 985–986 [A. 608]). Attributing these failures to faulty organizational work on the part of the Party (*ibid.* [A. 608]), the article observes that "[h]ad we succeeded in bringing these communication workers out on strike, the entire struggle would have reached a higher political level" since the very "ability of the capitalist State to function" would have been rendered doubtful (*id.*, p. 986 [A. 608–609]). The article goes on to tell of the "long and careful preparation" which the Party made for

[7] Additional evidence of the Party's role in engineering this strike, which was offered and received, however, only as against petitioner Schneiderman (Tr. 7690–1691), is set forth at pp. 60–63, *supra*. That evidence indicates that the American Communist Party, in bringing about the strike, was acting pursuant to instructions from the Communist International, issued following a meeting in Moscow attended and participated in by Schneiderman as the American Party's delegate to the Seventh World Congress of the Communist International.

the strike, particularly in the "key industries"[8] (*id.*, p. 989 [A. 610]). It describes the strike's "political" objective, which was in fact the "dominant" one, of "compel[ling] the Government to withdraw all [its] forces (*id.*, pp. 986–988 [A. 609]); points out that, while the strike "was not a revolution", it nevertheless had given Party members a "clear glimpse of how the struggle for power develops under the peculiar circumstances that obtain in the United States" (*id.*, p. 988 [A. 609]); and characterizes the strike as a "milestone in the revolutionary development of the American working class", the lessons of which "must be grasped by every member of the Communist Party" for future use (*id.*, p. 1003 [A. 610]).

That the Party still regards the 1934 San Francisco General Strike as a "rehearsal for seizure of power" (see *supra*, pp. 62, 63) is indicated by Party official Ida Rothstein's[9] reference to it in 1946 as "the closest thing to the Paris Commune[10] that has ever happened in this country" (A. 154). This observation was made at a club meeting in San Francisco at which Lenin's *The Paris Commune* (Ex. 492) was being discussed (A. 153–155; Tr. 4425–4428). The remark

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[8] See *infra*, pp. 171–177, for a key discussion of the Party's policy of concentrating its forces in "key" or "basic" industries, defined as "those upon which the whole economic system depends", and the reasons for this policy.

[9] Miss Rothstein has been a Party teacher (A. 223–224) in addition to her many other duties as a Party functionary (see, *e. g.*, A. 221–223, 283–285, 416–417; Tr. 4425–4429, 5438–5444, 5450–5453). She succeeded petitioner Fox as Chairman of the "Haskell section" of the Party in 1949 (A. 283).

[10] For details concerning the Paris Commune—the name given to the insurrectionary government of French Communists who seized and held power in Paris from March 18 to May 28, 1871—see 4 *The New Larned History* (1923 ed.), pp. 3448–3449; *Encyclopedia Britannica*, "Commune". See also Lenin's *The Paris Commune* (Ex. 492).

was occasioned by the following passage from this work of Lenin's (Ex. 492; p. 47 [A. 542–543]):

> I beg respectfully to remind Mr. Kautsky,[1] who knows Marx and Engels by heart, of the following evaluation of the Commune by Engels from the point of view of "pure democracy":
>
> "Have these gentlemen (the anti-authoritarians) ever seen a revolution? Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, *i. e.*, by highly authoritative means * * *. Would the Paris Commune have lasted a single day had it not relied upon the authority of the armed people against the bourgeoisie? Are we not, on the contrary, entitled to blame the Commune for not having made sufficient use of this authority?"

After reading the foregoing passage to the assembled group (A. 153–154), Miss Rothstein (A. 154–155)—

> * * * mentioned that the closest thing to the Paris Commune that has ever happened in this country was the 1934 waterfront strike; that here was an example where labor held power for a period of two or three days, and had the political development of the people been advanced, had the party laid a proper background and proper foundation of education among the masses, that an incident like that can be transferred into the revolutionary period; that you can go from a strike into a revolutionary action without too much difficulty.

She added that when a similar opportunity arises in the future, the Party should be "better prepared for action" (A. 155).

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[1] Karl Kautsky, a German political opponent of Lenin who favored working toward the establishment of socialism by parliamentary means.

THE "COMMUNIST POLITICAL ASSOCIATION" INTERLUDE OF 1944–1945

In 1943—the German armies being at the time still deep in Soviet territory on the Eastern Front and intensive preparations being under way for the opening of a Western Front—the Communist International proclaimed itself "dissolved" (Ex. MN, p. 42). On the heels of this development, in early 1944, steps were taken in this country to change the Communist Party of the United States into a so-called "political association" of Communists claiming to be dedicated to the furtherance of the interests of the United States through a policy of cooperation with all "progressive" forces (Ex. 443, pp. 3, 4; Ex. 42, pp. 656–672). This policy required that the Party's avowed adherence to the program and tenets of "Marxism-Leninism"—which call for a strong Communist Party as a "vanguard" to lead the "workers" in a class war with "capitalists" and the establishment of a "dictatorship of the proletariat" following forcible overthrow of all "bourgeois" governments (see *infra*, pp. 149–164)—be subordinated to the declared objectives of the new Party program. Accordingly, in May 1944, under the leadership of Earl Browder, the Party held a national convention at which it "dissolved" itself (Ex. 443, p. 3) and immediately proclaimed itself the "Communist Political Association" of the United States (Ex. 42, p. 664). This was to be a "new non-party organization" which, while "adher[ing] to the principles of scientific socialism, Marxism", was to be "shaped by the needs of the nation at war" and dedicated to the "common cause of the progressive majority of the American people" (*ibid.*; Ex. 443, p. 3).

The "Communist Political Association" thus inaugurated was to remain in effect a little over one

year before it in turn was to be dissolved and the "Communist Party" reconstituted.

THE 1945 RECONSTITUTION OF THE COMMUNIST PARTY

In April 1945, as the war in Europe was coming to an end, *Cahiers Du Communisme*, the theoretical organ of the Communist Party of France (Ex. 42, p. 656), carried an article by French Communist leader Jacques Duclos (*id.*, p. 590) entitled *On the Dissolution of the Communist Party of the United States* (*id.*, pp. 656–672). The article condemned the Browder program of class peace, embodied in the Communist Political Association, as constituting "notorious revisionism", violating the most fundamental principles of Marxism-Leninism (*id.*, p. 670).[12] The publication of this article triggered a swift reversal of Party policy in this country. The article was pub-

[12] Among other things Duclos' article discussed and quoted extensively from what has come to be known as the "Foster letter", which had been suppressed by the National Board of the Communist Party shortly prior to the Party's "dissolution" a year previously (Ex. 42, pp. 660–663). In this letter, dated January 20, 1944, and addressed to the National Committee, Foster, the then National Chairman of the Party, had expressed doubts concerning Browder's program of class peace (*id.*, pp. 640–654). The appearance of a dissenting voice led to the hasty convening of the top Party officials at an "enlarged" meeting of the National Board on February 8, 1944, to consider the situation created by Foster (*id.*, p. 655). All present voted against Foster's position, except Foster himself and one other (*ibid.*), the latter being shortly thereafter expelled from the Party (*id.*, p. 663). It was decided at the meeting that Foster's letter should be "suppressed", *i. e.*, concealed from the general membership, and this was done (Ex. 55, pp. 792, 830). Foster later explained that he had submitted to the suppression of his letter in the interest of Party unity and to avoid expulsion (*id.*, p. 792). His task during this period as he saw it, he said, had been "to keep the C. P. A., in fact, if not in name, the Communist Party" (Ex. 42, p. 655).

lished here shortly after its appearance in France (*id.*, pp. 656–672) and Party leaders began a series of resolutions and statements echoing Duclos' criticisms. The upshot of it all was the "reconstitution" of the Communist Party at a special national convention held for that purpose from July 26 to 28, 1945 (*id.*, pp. 579–590, 629–632; Ex. 55, p. 782; A. 55).

The convention was attended by petitioners Stack, Lima, Healey, Schneiderman, and Richmond (A. 44–45, 73), as well as by most if not all of the *Dennis* defendants (A. 46–52). Meeting as the Communist Political Association on the first day (A. 55), the Association "dissolved" itself and "the same delegates", after "reconstitut[ing] themselves as delegates of the Communist Party", "voted to reconstitute the Communist Party" (A. 55, 73).[13] Addressing the convention, alleged co-conspirator Foster castigated Browder as having been preaching, under the aegis of the Communist Political Association, "anti-Marxism", and he quoted Duclos' statement that the Browder program had been a "notorious revision of Marxism" (Ex. 55, p. 784). "[U]nder the false flag of a Marxism brought up to date", said Foster, Browder had been "making a head-on attack upon the whole body of Marxist-Leninist principles", as was clear from his "often-expressed scorn for the 'old books' and 'old formulas', by which, of course, he means Marxist-Leninist books and formulas" (*ibid.*). These "Marxist-Leninist classics", said Foster, instead of being "throw[n] away", as Browder would have it, must form the very basis of the reconstituted Party (*ibid.*). A new constitution was accordingly adopted which proclaimed in its preamble that the Party "bas[es]

[13] The "California delegates", according to witness Lautner, were "the noisiest * * * in demanding the immediate reconstitution" of the Party (A. 72–73).

itself upon the principles of scientific socialism, Marxism-Leninism" (A. 57). When some one asked from the floor of the convention where in the preamble "the principle of [the] dictatorship of the proletariat" was to be found, alleged co-conspirator Eugene Dennis replied, "It is there. * * * Even the blind can see it" (A. 56–57).

THE CENTRAL IMPORTANCE OF MARXISM-LENINISM IN THE RECONSTITUTED PARTY

"As never before", reported Party leader Foster to the 1945 reconstituting convention, "we must train our Party in the fundamentals of Marxism-Leninism" (Ex. 55, p. 788). "[T]he study * * * of Marxist-Leninist theory and its application to the conditions of the United States", reported National Secretariat member John Williamson (Ex. 120, p. 1058) to a 1945 post-convention meeting of the National Committee (*id.*, p. 1109), must be made the subject of "an organized campaign throughout the Party" (*id.*, p. 1122). "[N]ew and old members" alike, stressed Eugene Dennis in a speech delivered at another National Committee meeting (A. 600),—

> * * * must acquire a new and more profound grasp of the theory and lessons to be learned from such Marxist classics as the *Communist Manifesto*, Lenin's *Imperialism*, Stalin's *Foundations of Leninism*, * * * and the *History of the C. P. S. U.*[34]

"[W]e—all of us", he said, "must live and breathe the science of Marxism" (*ibid.*).

"[D]irective[s]", accordingly, were issued "from party headquarters in New York" ordering "study

[34] Relevant selections from these and other Marxist-Leninist classics—selections made by the Party itself in the study-outlines used in its schools and classes—may be found at pp. 151–163, *infra*.

circles to be set up" for the training and retraining of Party members "along the lines of Marxism-Leninism." (A. 197).[15] This program of "systematic and organized education and self-study" was to be carried out under the guidance of the various Party clubs throughout the country as well as of the governing "Party Committee[s]" at the "Section" and "County" levels (A. 568).

The new Party line, as thus laid down, was widely promulgated throughout the California Party. Petitioners Yates, Stack, Lima, Lambert, Healey, Carlson, and Schneiderman were among those who attended the 1945 State Convention at which the new line was proclaimed (A. 14–16, 127–131). At the San Francisco session of the Convention, Schneiderman told the delegates that the Party was "going back" to the "fundamental" books of "Marxism, Leninism and Stalinism" and that they should "build [their] libraries" on these classics (A. 15). At the Los Angeles session, petitioner Healey, stressing that "the future of the party [would] be militant", urged the "re-education of all Marxists" (A. 131). Petitioner Stack likewise urged the "reinstitut[ion]" of the old "Marxist-Leninist rules" (A. 130), and petitioner Yates, in a speech at a 1946 Party meeting attended by petitioners Steinberg, Spector, Kusnitz, Dobbs, and Healey among others, emphasized that "only through Marxist-Leninist training" would it be possible to achieve a "Soviet * * * type of government" "all over the world"[16] (A. 136). See also A. 135, 138, 145, 584; Ex. 329, p. 4.

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[15] For the curricula of these study groups, see *infra*, pp. 149–164.

[16] For further details of this speech of Yates', see *supra*, p. 17.

MARXISM-LENINISM, AS TAUGHT IN PARTY SCHOOLS—THE NECESSITY OF FORCE AND VIOLENCE IN THE "PROLETARIAN REVOLUTION" WHICH IS TO EVENTUATE IN THE "DICTATORSHIP OF THE PROLETARIAT"

"Marxism-Leninism" was described by witness Lautner, the head of the Party's New York State "Review Commission"[47] until his explusion from the Party in 1950 (A. 52–53), as comprehending "the sum total" of the "teachings, policies and program of the Communist Party" and "Communist [International]", as "taught and advocated by the foremost exponents of Communism"—"Lenin, Stalin, Marx, [and] Engels" (A. 70). The writings of these "foremost exponents", many of which are in evidence in this case, are frequently referred to as the Marxist-Leninist "classics" (A. 36–37, 321, 414).

From 1946 to 1950, the California Party, in accordance with the national policy laid down at the 1945 reconstituting convention (*supra*, pp. 146–147), conducted a series of schools and classes in which Party members and recruits were indoctrinated in the fundamental principles of Marxism-Leninism (A. 33–34, 38–39, 57–61, 84–85, 97, 107–108, 175, 182–184, 196–199, 297–298, 302, 397, 431–433; Ex. 204). The Party also arranged for the sale and distribution of the Marxist-Leninist classics for self-study by members and recruits (A. 36–37, 190–192, 196–199, 278, 289, 316, 320–321, 413–414). Members who occupied Party positions of responsibility even at the club level were required to be especially well-grounded in Marxist-Leninist fundamentals (A. 201–202, 310–312, 315, 377–378, 586–587).

The nature and content of Marxism-Leninism was established at the trial by documentary evidence con-

[47] The disciplinary and security body of the Party in New York (A. 53–54).

sisting of typed study-outlines designed for self-study and class use.[18] These study-outlines, which consist to an important extent of assigned readings in the Marxist-Leninist classics, fall into two groups.

The *first* group (discussed *infra*, pp. 151–161) consists of three substantially identical outlines[19]—Exhibits 93, 626, and 613 (reproduced in part at A. 612–620)—issued, respectively, by the Party's "National Educational Commission" (A. 612), its California "State Educational Committee" (A. 619), and its Los Angeles County "Educational Committee" (A. 620). They were used in Party schools and classes throughout California following the 1945 reconstitution of the Party (A. 33–34, 175, 431–433; Tr. 3866–3867).[20] While the evidence does not affirmatively show their use in California later than 1946, it does show that Exhibit 93—the outline issued by the Party's National Educational Commission—was used in New York at least as recently as 1950 (A. 61, 53).

The *second* group of outlines (discussed *infra*, pp. 161–164)—Exhibits 163, 450, 201, 213, and 214 (reproduced in part at A. 620–635, 639–640)—was used by the California Party in schools and classes called "Marxist Institutes" which the Party conducted in San Francisco and Los Angeles during 1949 and 1950 (A. 84–85, 96–98, 107–108, 297–298, 396–401; Tr. 2835–2837, 3549). One of these, Exhibit 163, was prepared by petitioner Yates in collaboration with petitioner Schneiderman (A. 397).

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[18] In addition to testimony as to oral teachings by Party instructors (*e. g.*, A. 57–61, 193–195, 244–245).

[19] For the nature of the few minor differences, see A. 431–433, 619–620.

[20] One of the outlines, Exhibit 93, is the same outline as that introduced (as Exhibit 9 x Z) in the *Dennis* case. Its contents are summarized at pp. 117–140 of the Government's brief in this Court in that case (No. 336, Oct. Term, 1950).

The first group of outlines.—Lesson I of the first group of outlines (Ex. 93, pp. 1–3; Ex. 626, pp. 1–3; Ex. 613, pp. 1–3) treats of "Marxist-Leninist Theory" (Ex. 626, p. 1). It quotes Lenin's teaching that "[w]ithout a revolutionary theory there can be no revolutionary movement" and Engels' insistence that Communist teaching is no mere "dogma" but a "guide to action" (*ibid.*). It reviews the "history of hitherto existing society", which it equates, with Marx, to "the history of class struggles" (*id.*, p. 2), and assigns for reading (see *id.*, p. 3) the first chapter of the *Communist Manifesto*[21] (Ex. 39, pp. 9–21), where Marx and Engels traced this history in detail. Modern society, they held, is split "into two great hostile camps * * * directly facing each other—bourgeoisie and proletariat" (*id.*, p. 9). This "more or less veiled civil war, raging within existing society", finally "breaks out into open revolution" and results in "the violent overthrow of the bourgeoisie" by the proletariat (*id.*, pp. 20–21).[22]

Lesson IV (Ex. 93, pp. 12–17; Ex. 626, pp. 12–17; Ex. 613, pp. 12–17) deals with "The State" as it exists before (Ex. 626, pp. 12–13) and after (*id.*, pp. 13–15) "the Socialist Revolution." The state is defined as an "instrument for [the] oppression of one class by another" (*id.*, p. 12). The "bourgeois

[21] The *Communist Manifesto*, the joint product of Marx and Engels, was first published in 1848 (Ex. 39, p. 3). The copy in evidence was printed in this country in 1939 by International Publishers Co., Inc. (*id.*, pp. 1, 2), a Party publishing house.

[22] *Cf.* the closing words of the *Manifesto*, proclaiming that: "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution. * * *" (*id.*, p. 44).

state" takes one of two forms—"fascism" or "bourgeois democracy" (*id.*, pp. 12–13). "[F]ascism" is "open and terroristic dictatorship of [the] bourgeosie" (*id.*, p. 13). "Bourgeois democracy", of which the United States is an example (*id.*, p. 12), is "dictatorship of [the] bourgeoisie" but in "veiled form"[23] (*ibid.*). "Following the Socialist Revolution" the state is in the form of the "dictatorship of the proletariat" (*id.*, p. 13), this being "a new type of democracy" (*id.*, p. 14)—not " 'complete' democracy", however, *i. e.*, "democracy for all," but rather a type of democracy which is "democratic *in a new way*—against the bourgeoisie" (*ibid.*, quoting Lenin). It is "*proletarian* democracy—the democracy of the exploited majority * * * directed against [the exploiting] minority" (*ibid.*, quoting Stalin). And when the proletariat takes power it does not "simply take possession of the ready-made state machine and use it for its own purposes" (*ibid.*, quoting Marx). "What is required is 'the shattering of the former state power * * *' " (*ibid.*, quoting Engels).

Included in the assigned reading for Lesson IV (see *id.*, p. 16) is chapter IV of Stalin's *Foundations of Leninism*[24] (Ex. 1, pp. 47–60), entitled "The Dictatorship of the Proletariat." "The dictatorship of the proletariat", says Stalin in the cited chapter, "is the instrument of the proletarian revolution" (*id.*, p. 47). It has the twofold purpose of "crushing the resistance of the overthrown exploiters" and "carrying the

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[23] *Cf.* petitioner Yates' testimony at the trial that the United States is a "bourgeois democracy" (Tr. 10554).

[24] *Foundations of Leninism* had its origin as a series of lectures delivered at Sverdlov University in Moscow in 1924 (Ex. 1, p. 5). The copy in evidence was published in this country in 1939 by International Publishers Co., Inc. (*id.*, p. 4), the Party publisher.

revolution to * * * complete victory" (*ibid.*). It is not sufficient for the proletariat merely "to seize [power]" (*id.*, p. 48). "The seizure of power is only the beginning. For many reasons the bourgeoisie that is overthrown * * * remains for a long time stronger than the proletariat which has overthrown it" (*ibid.*). "[T]o consolidate" the power which has been seized and "make it invincible" is the function of the dictatorship of the proletariat (*ibid.*). "Briefly", says Stalin (quoting Lenin), "*the dictatorship of the proletariat is the rule—unrestricted by law and based on force—of the proletariat over the bourgeoisie.* * *" (*id.*, p. 53; emphasis in the original). It (*id.*, p. 54)—

> * * * cannot arise as the result of the peaceful development of bourgeois society and of bourgeois democracy; it can arise only as the result of the smashing of the bourgeois state machine, the bourgeois army, the bourgeois bureaucratic machine, the bourgeois police.

Stalin further points out in the cited chapter of his work that, while Marx did at one time concede the possibility of a "peaceful evolution of bourgeois democracy into a proletarian democracy" in "England and America", that concession no longer has validity (*id.*, p. 55). Now "the special conditions for peaceful development in England and the United States [have] disappeared" so that Marx's "qualification in regard to these countries * * * [can] no longer hold good" (*ibid.*). Hence, at present, in England and the United States no less than in other "imperialist countries of the world" (*id.*, p. 56)—

> * * * the law of violent proletarian revolution, the law of the smashing of the bourgeois state machine as a preliminary condition for such a revolution, is an inevitable law * * *.

Also included among the reading assignments for Lesson IV (see Ex. 626, p. 16) are chapters I, II, and III of Lenin's *State and Revolution* [25] (Ex. 11, pp. 7–48), a book which was written on the eve of the Bolshevik Revolution in Russia (see fn. 25, *infra*). "The replacement of the bourgeois by the proletarian state", wrote Lenin, "is impossible without a violent revolution" (*id.*, p. 20). The view that Marx contemplated a gradual development toward socialism as distinguished from a "seizure of power" was dismissed by Lenin as a "vulgar interpretation"; "as a matter of fact", he said, "*exactly the opposite is the case.* Marx's idea is that the working class must *break up, shatter* the 'ready-made state machinery', and not confine itself to merely taking possession of it" (*id.*, p. 33; emphasis in the original).[26]

Lesson V (Ex. 93, pp. 18–23; Ex. 626, pp. 18–20; Ex. 613, pp. 18–23), which treats of "Imperialism—Present Day Capitalism," teaches that the present stage of capitalist development is the stage of "imperialism" [27] (Ex. 626, pp. 18–20), or "dying capitalism" (*id.*, p. 19), when the capitalist systems are in a period of "general crisis" (*ibid.*). At this stage, "all material pre-requisites for [the] socialist re-organization of society" are fulfilled and the proletarian revolution becomes imminent (*id.*,

[25] *State and Revolution* was written in 1917 (see Ex. 315, p. 2). The copy in evidence was published in this country in 1932 by International Publishers Co., Inc. (Ex. 11, p. 2).

[26] Lenin, like Stalin (*supra*, p. 153), rejected Marx's theory that it might be possible for the "bourgeois" state in England and the United States to be destroyed without violence (Ex. 11, p. 34). "Today", said Lenin, "this exception made by Marx is no longer valid" (*ibid.*).

[27] "American imperialism", the lesson further says, "is the most powerful imperialist force in the world", "threatening [the] aspirations of [the] people of the world for peace, democracy and progress" (Ex. 613, p. 22).

p. 19). The lesson-outline adopts (see *id.*, p. 20) the discussion of this subject appearing in "pp. 167–172" of the *History of the Communist Party of the Soviet Union*[28] (Ex. 28), which treats of the means which Communists the world over should use to bring about the defeat of their "own" bourgeois governments in the course of their "imperialist wars" and to convert such wars into "civil wars" (*id.*, p. 167).

Lesson VII (Ex. 93, pp. 27–29; Ex. 626, pp. 24–27; Ex. 613, pp. 27–30) defines "Socialism" as the "[e]stablishment of the political power of the working class"—the "foundation of Soviet power"—"[a]chieved through Revolution" (Ex. 626, p. 24). A "prerequisite" of the "Socialist Revolution" (*id.*, p. 25) is said to be "[s]upport of the class conscious workers by the majority of the people" (*id.*, p. 26). "In order to obtain the power of [the] state", the outline states (*ibid.*, quoting Lenin),—

> * * * the class conscious workers must win the majority to their side. * * * We are not Blanquists, we are not in favor of the seizure of power by a minority. *

But that "the majority" referred to does not mean "[a]n absolute majority" of all the people (*ibid.*), and much less such a majority peacefully expressing their will at the polls, is quickly made clear: it means rather—and here the outline again quotes Lenin—that those who effect the "seizure of power" should have the "sympathy of the masses", meaning by "the term masses" the "majority of [the] workers" and of "the exploited" (*ibid.*).

The significance of the term "majority" in the foregoing is further clarified by "Chapter III, part

[28] This work, which was first published in 1939, was prepared under the supervision of the Central Committee of the Communist Party of the Soviet Union (see fn. 53, *supra*, p. 45).

3" of Stalin's *Foundations of Leninism* (Ex. 1, pp. 33–46), one of the passages which the outline assigns for reading on this point (see Ex. 626, p. 27). There, Stalin quotes a statement of Lenin's that (Ex. 1, p. 43):

> * * * It follows that for revolution it is essential, first, that a majority of the workers (or at least a majority of the class conscious, thinking, politically active workers) should fully understand the necessity for revolution and be ready to sacrifice their lives for it * * *.

The matter is given even more pointed clarification by the fourth chapter of Stalin's *Problems of Leninism*[2] (Ex. 146, pp. 16–28), which the lesson-outline assigns as "Additional Reading" on this point (see Ex. 626, p. 27). Stalin, again quoting Lenin, refers with scorn to the view of the "petty-bourgeois democrats" that "the majority of the population" must "[f]irst * * * declare itself for the party of the proletariat" and that "[o]nly then can it, and should it, take power" (Ex. 146, p. 20). "That", says Stalin, still quoting Lenin (*id.*, pp. 20–21),—

> * * * is what is said by *petty-bourgeois democrats who call themselves 'socialists' but are really the henchmen of the bourgeoisie.* [My italics.—*J. S.*]
>
> "*But we say:* Let the revolutionary proletariat first overthrow the bourgeoisie, break the yoke of capital, break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses

[2] *Problems of Leninism* was written in 1926 (Ex. 146, p. 92). The copy in evidence was copyrighted in this country in 1934 and printed in 1935 by International Publishers Co., Inc. (*id.*, p. 4).

> by satisfying their wants at the expense of the exploiters. [My italics.—*J. S.*] * * *"[30]

Nor does the cited work leave doubt as to the manner in which the proletariat should "break up" the "bourgeois state apparatus." Having "overthrow[n] the bourgeoisie and seize[d] state power", the same chapter continues, the proletariat (*id.*, p. 21)—

> * * * must introduce Soviet rule [and] smash to pieces the old state apparatus * * *.

That, finally, the methods of the elective process are quite alien to this whole process of power-seizure is made explicitly clear by Lenin's "reply" to "those who confuse the dictatorship of the proletariat" with "popular" or "elected" government (*id.*, p. 22)—which Stalin quotes with approval in this same fourth chapter. "The class which has seized political power", said Lenin (*ibid.*),—

> * * * does not deceive itself or others by talk about popular, elected government, sanctified by the whole people.

For, "[t]he scientific concept, dictatorship", he said (*id.*, p. 25),—

> * * * means nothing more nor less than * * * unlimited power, resting on violence and not on law. * * *"[31]

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[30] At a club "educational" held in 1949 (A. 197), a Party teacher quoted this passage (A. 199) to buttress his teaching that in the bringing about of socialism it is not necessary for the Party to have "a majority of the people" on its side before seizing power; that "once in power" the proletariat "had the obligation to shatter the state machinery"; and that "the actual taking over of the government would be violent, that there could be no chance of a peaceful overthrow" (A. 198).

[31] At a class held for new members in 1947 (A. 182-183), the Party instructor read to the students the following passage from the same (4th) chapter of *Problems of Leninism* to docu-

Lesson VIII [23] (Ex. 93, pp. 30–33; Ex. 626, pp. 28–31; Ex. 613, pp. 31–34) treats of "The Communist Party", "the vanguard of the working class", without which "it is impossible for the working class to achieve socialism" (Ex. 626, p. 28). The lesson assigns for reading (see Ex. 626, p. 31) "Chapter II (*The Method*)" of *Foundations of Leninism* (Ex. 1, pp. 20–27). In that chapter Stalin again heaps scorn on "[t]he opportunists" who "assert that the proletariat cannot and ought not to take power unless it constitutes a majority in the country" (*id.*, pp. 22–23). "No proofs are adduced", he says, "for there are no proofs, either theoretical or practical, that can justify this absurd thesis" (*id.*, p. 23).[24]

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ment her thesis that "both Stalin and Lenin agreed that [the advent of Communism] could not occur peaceably", that "there had to be a violent overthrow of the Government and a complete smashing of the capitalistic processes" (A. 183):

"Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?

"Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution" (Ex. 146, pp. 19–20).

[23] Erroneously numbered "VII" in all three exhibits.

[24] In conformity with this principle, a Party school using the outline was taught that a necessary condition of the proletarian revolution is the existence of a Communist Party having the function of a "vanguard party" to "lead the revolution" not only "during [the] uprising" but also "after the armies, navies and the police force * * * had been crushed" (Tr. 1786).

[25] In a class discussion concerning whether "a majority of the people" would be needed to achieve a successful proletarian revolution, these words of Stalin were read to the class to prove that it is "possible to bring into effect the dictatorship of the proletariat without the necessity of having [a] majority of the working class in favor of it at that particular time" (A. 38–40).

Lesson IX [35] (Ex. 93, pp. 34–37; Ex. 626, pp. 32–35), the final lesson of the outlines, deals with "Strategy and Tactics", the "Science of Working Class Leadership" (Ex. 626, p. 32). The "essence" of this "science" is to "prepare [the masses] for [the] final struggle" (*ibid.*). The "[p]rincipal features of strategy" include "[d]irection of [the] main blow and distribution of forces" (*ibid.*). Tactics are "subordinate to strategy"; they change from time to time depending on the current situation (*id.*, p. 33). "What determines tactics?" the lesson-outline asks (*ibid.*). The reply, quoting from the *Program of the Communist International* [36] (Ex. 59, p. 80), states that "[i]n determining its line of *tactics*" (Ex. 626, p. 33)—

> * * * each Communist Party must take into account the concrete internal and external situation, the correlation of class forces, the degree of stability and strength of the bourgeoisie, the degree of preparedness of the proletariat, the position taken by the various intermediary strata in its country, etc. * * *

The lesson relates how the "Seventh World Congress [of the Communist International] develop[ed] new tactical orientation" (*id.*, p. 34). The "united front", "people's front", and "anti-fascist front" are listed as

[35] Lesson IX appears, for some reason to be missing from Exhibit 613 (see A. 620), the outline (or rather the copy in evidence of the outline) issued by the Party's Los Angeles County Educational Committee (see *supra*, p. 150). It is in both the other outlines.

[36] The *Program of the Communist International* was adopted in 1928 by the Sixth World Congress of the Communist International (Ex. 59, copyright page). It was copyrighted in this country in 1929 by the Party publishing house, Workers Library Publishers, Inc.; and at least three editions were published here (*ibid.*). The copy in evidence was published in 1936 as part of the third edition (*ibid.*).

examples of sound "tactics" for the times in which they were adopted, and it is suggested to the instructor that he "[g]ive historical examples of [their] application" (*ibid.*). The lesson lists for discussion the "difference between revolutionary and reformist tactics" (*id.*, p. 33) and the reading assignments include (see *id.*, p. 35) chapter VII of *Foundations of Leninism* (Ex. 1, pp. 88–106), entitled, like the lesson itself, "Strategy and Tactics." In that chapter Stalin explains the difference between a "reformist" and a "revolutionary"[37] and states the proper "use" to which the revolutionary should put "a reform" (*id.*, p. 104):

> The revolutionary will accept a reform in order to use it as an aid in combining legal work with illegal work, to intensify, under its cover, the illegal work for the revolutionary preparation of the masses for the overthrow of the bourgeoisie.

The lesson also assigns as "Additional Reading" (see Ex. 626, p. 35) a compilation of "Readings in Leninism" entitled *Strategy and Tactics*[38] (Ex. 147). Among the many passages on this subject to be found in this work is the following (*id.*, p. 66 [A. 527–528]),

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[37] "To a reformist", says Stalin, "reforms are everything, while revolutionary work is something incidental, something just to talk about, mere eyewash." For this reason, the "reforms" of the "reformist" are actually "instrument[s] for strengthening [the bourgeois] regime" and "for disintegrating the revolution." "To a revolutionary, on the contrary, the main thing is revolutionary work and not reforms; to him reforms are by-products of the revolution." (Ex. 1, p. 104.)

[38] *Strategy and Tactics*—the full title of which is *Strategy and Tactics of the Proletarian Revolution* (Ex. 147, p. 6)—is "one of a series of 'Readings in Leninism'" consisting of "articles and extracts * * * from the works of Marx, Engels, Lenin and Stalin", each "dealing with a basic question of Leninist theory" (*id.*, p. 3). The copy in evidence was copyrighted and published in this country in 1936 by International Publishers Co., Inc. (*ibid.*).

from the *Program of the Communist International* (see *id.*, p. 70):

> When *the revolutionary tide is rising*, when the ruling classes are disorganized, the masses are in a state of revolutionary ferment, * * * and * * * are ready for action and for sacrifice, the Party of the proletariat is confronted with the task of leading the masses to a direct attack upon the bourgeois state. This it does * * * by organizing *mass action*, upon which all branches of Party agitation and propaganda * * * must be concentrated. [Emphasis in the original]

This "mass action" is to include (*ibid.* [A. 528])—

> * * * strikes; * * * a combination of strikes and armed demonstrations and finally, the general strike conjointly with armed insurrection against the state power of the bourgeoisie.[29]

The second group of outlines.—The second group of outlines (see *supra*, p. 150)—those used in the Party's "Marxist Institutes" conducted during 1949 and 1950, *viz.*, Exhibits 163, 450, 201, 213, and 214—included among their assigned readings substantially the same Marxist-Leninist classics as had the earlier outlines. In many instances even the chapter- and page-references to these classics—the contents of which have been quoted or paraphrased in our discussion of the first group of outlines (*supra*, pp. 151–161)—are iden-

[29] *Cf.* the Party's discussion, in its theoretical organ *The Communist*, of the Party-instigated San Francisco general strike of 1934 as in effect a rehearsal for seizure of power (*supra*, pp. 141–142). For petitioner Schneiderman's and the Communist International's connection with this strike, see *supra*, pp. 60–63.

tical.[39] Several of the outlines in the second group include among their assigned readings "pp. 7–20" of Lenin's *State and Revolution* (Ex. 11)"—a passage in which Lenin cites Marx and Engels to prove that "replacement of the bourgeois by the proletarian state is impossible without a violent revolution" (*id.*, p. 20; Tr. 2781), that indeed "just this point of view about violent revolution lies at the root of the *whole* of Marx's and Engels' teaching" (*ibid.*). A number of the outlines in the second group list as "Required Reading" a 1947 article by William Z. Foster entitled *Marxism and American Exceptionalism* (Ex. 651),[42]

[39] For example, both groups of outlines list among their reading assignments the following passages from Stalin's *Foundation of Leninism* (Ex. 1):

Introduction (pp. 9–13) (quoted in part *supra*, p. 29): Assigned for reading in first group at Exhibit 626, pp. 2, 3; in second group at Exhibit 163, "Session One", p. 2 (see A. 620), Exhibit 450, "Session I", p. 3 (see A. 627), and Exhibit 201, "Session One", p. 2 (see A. 630).

Chapter II (pp. 20–27) (discussed *supra*, p. 158): Assigned for reading in first group at Exhibit 626, p. 31; in second group at Exhibit 450, "Session 6", p. 2 (see A. 628).

Chapter III, part 3 (pp. 33–46) (discussed *supra*, pp. 155–156): Assigned for reading in first group at Exhibit 626, p. 27; in second group at Exhibit 450, "Session 3", p. 3 (see A. 627) and "Session 6", p. 2 (see A. 628).

Most of chapter IV, *viz.*, pp. 47–53 (discussed *supra*, pp. 152–153): Assigned for reading in first group at Exhibit 626, p. 16; in second group at Exhibit 163, "Session Seven", p. 2 (see A. 622), and Exhibit 201, "Session Nine", p. 2 (see A. 633).

Chapter VII (pp. 88–106) (discussed *supra*, p. 160): Assigned for reading in first group at Exhibit 626, p. 35; in second group at Exhibit 450, "Session 9", p. 3 (see A. 629), and Exhibit 214, "Session 11", p. 4 (see A. 639).

[41] See Exhibit 163, "Session Six", p. 2, and Exhibit 201, "Session Eight", p. 3 (A. 633). See also Tr. 2748–2749, 2775.

[42] See Exhibit 163, "Session 4", p. 2 (A. 621); Exhibit 450, "Session 7", p. 3 (A. 629); Exhibit 201, "Session 5", p. 3 (A. 632).

the thesis of which is that, contrary to the teachings of the so-called "American Exceptionalists", the *Communist Manifesto* of Marx and Engels "IS", in the words of the article, "VALID FOR THE UNITED STATES" (*id.*, p. 11 [capitals in the original]; see Tr. 3547). The *Communist Manifesto*, as has previously been noted (*supra*, p. 151, fn. 22), boldly proclaims that (Ex. 39, p. 44)—

> The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. * * *

And in at least one of the "Marxist Institutes" the students were taught that, while the "pre-conditions" for the socialist revolution "would have to be developed over a period of time", as soon as the conditions were ripe for socialism "the change would be a violent thing" (A. 119–120).

The second group of outlines, however, also referred to sundry non-Marxist texts of an innocuous nature and contained statements purporting to repudiate the use of force and violence.[9] The evidence showed, however, that many of these non-Marxist texts were never used in the classes (A. 103–104). Set out in full at A. 622–626 is "Session 8" of Exhibit 163, the outline

[9] Witness Scarletto testified that when he first attended classes at the "Marxist Institute" in October of 1949 the Party's "county educational director" for Los Angeles gave him a copy of the *Communist Manifesto* in which the director had written the word "Read" in the margin opposite this passage (Tr. 2741, 2750–2753).

[10] "Session 8" of Exhibit 163, for example, refers to the "[e]fforts of [the] bourgeoisie today to identify Marxism-Leninism with advocacy of force and violence" (A. 623) and to the "[d]ifference between social change through revolution and advocacy of force and violence" (A. 624). "Historically", the lesson adds, "force and violence [is] always used by [the] domi-

prepared by petitioners Yates and Schneiderman (see A. 397), which purports to renounce the use of force and violence. It is to be noted that woven into the lesson, as examples of revolution, are references to various revolutions in which force and violence was used as a matter of historic record, including the "Russian Revolution [of] 1917" (A. 622).[45]

THE ORGANIZATIONAL STRUCTURE OF THE PARTY AND THE MAINTENANCE OF "IRON DISCIPLINE" THROUGH THE PRINCIPLE OF "DEMOCRATIC CENTRALISM"

The Communist Party is a tightly knit, rigidly disciplined, hierarchical organization. At each of its operational levels—national, state, county, "divisional", "sectional", and local—power is exercised through a governing group composed of officers and an executive committee, with each group strictly subject to the orders of and answerable to the one next above it.

The Party's Constitution declares that the highest authority of the Party is the National Convention (Ex. 153, p. 15). A national convention is held every two years and is composed of "delegates elected by the State and District Conventions"[46] (*ibid.*). Be-

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nant class to prevent expression of [the] democratic will of the people" (*ibid.*).

The Court may judicially note that the outlines in the second group were not used (see *supra*, p. 150)—presumably, indeed, they were not prepared—until well after the return of the indictment in the *Dennis* case, on July 20, 1948 (Record, No. 336, Oct. Term, 1950, p. 7).

[45] Also cited as examples of revolution are what are described as the "eastern democracies following World War II" (A. 622).

[46] "District organizations", according to the Party Constitution, "may be established by the National Committee. Where these cover two or more states, the State Committees shall be under the jurisdiction of the District Committee, elected by and

tween conventions, the Constitution further provides, the highest authority is the National Committee, the members of which are elected by the National Convention (*id.*, pp. 16, 17). The National Committee has "sole and complete authority to make all decisions and take all actions" for the Party (*id.*, p. 17). Within the National Committee there exists, or has existed in the recent past, a smaller group known as the National Board and within the National Board a still more select group known as the National Secretariat (Ex. 650, p. 1 [A. 598]; Ex. 55, p. 793). At the summit of the hierarchy are two officials known as the National Chairman and the General Secretary (Ex. 153, p. 18).

Next below the national organization come the State and District organizations, a District comprising (in some instances) two or more states (*id.*, pp. 12, 14). Subject to the ultimate authority of the National Committee, the State Convention is the highest authority within a state, and the State Committee the highest authority between conventions (*id.*, p. 13). In the case of a District which embraces two or more states, the highest authorities within the District are the District Convention and the District Committee, the Committees of the constituent states being under the jurisdiction of the District Committee (*id.*, p. 14).

Formerly, the California State organization of the Party was a constituent part of a District known as "District 13", which embraced three other western states and the Territory of Hawaii in addition to California (A. 16; Tr. 436; Ex. MM-1, p. 96). In the recent past, and apparently since about November 1942 (see Ex. 556 [A. 446]), the California State or-

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representing the Party membership of the States composing these districts" (Ex. 153, p. 14). As noted *infra*, p. 165, California was formerly part of "District 13."

ganization has not been part of any District group, being known simply as the "Communist Party of California."

The chief executive officer and Party leader at the state level is the "State Chairman", which official, it appears, is also at times referred to as the "District Organizer", even though no "district" in the strict sense of the term (see *supra*, p. 165) may be involved (A. 42). The position next in importance in the state is that of "Organizational Secretary" (A. 6), the duties of this official including the organizing of recruiting drives and mass campaigns in addition to the responsibility of seeing to it that all Party members in the state pay their dues (A. 393–394).

The California Party is further divided into County organizations (A. 16–17) and, in some instances, "regional" organizations, a "region" being comprised of two or more of the less populous counties (A. 16, 109). The highest authority in the county is the County Board or County Committee, the two terms being used interchangeably (A. 26–27). Each county is in turn divided into "sections" (A. 17), with units known as "divisions", each comprising several sections, sometimes intervening between these two levels (A. 292–293, 356). Each section is made up of "clubs", the lowest organizational unit (A. 388).

Each county, division, and section is governed by an executive committee, and the two principal officers at each of these levels (as at the state level) are called the Chairman, or "Organizer", and the Organizational Secretary (A. 2, 7, 9, 14, 17, 293, 318, 356), or "org. sec.", as that official is sometimes familiarly referred to (A. 290, 291, 293, 320).

The clubs, the basic units of the Party, are organized on a community, shop, or industrial basis (A. 388; Ex. 153, p. 12). Every Party member belongs to a club

(A. 388), and each club has its own executive committee (Ex. MF, p. 9). The club Chairman, who is required to be "one of the most politically developed comrades" (*id.*, p. 10), has the responsibility, among others, of "transmitting * * * the policies of higher bodies" to "the membership" (*id.*, p. 11). The club may also have an "Organizational Secretary" to assist the Chairman in his duties (*id.*, p. 10). Other club officials include "educational director" (*id.*, p. 11), "literature director" (*id.*, p. 14), "press director" (*id.*, p. 15), etc. Collectively, the officers constitute the "Club Executive", among whose responsibilities is the enforcement of "directives and policies of higher bodies" (*id.*, p. 9).

The evidence shows that petitioners Yates (A. 7), Stack (A. 45), Lima (A. 44), Healey (A. 44, 52), Schneiderman (A. 7, 44, 46, 52), and Richmond (A. 45) have all attended National Conventions of the Party. Petitioners Lima (A. 598) and Schneiderman (A. 7, 598) have served as members of the National Committee, and petitioner Yates has served as an alternate member of that body (A. 132). Schneiderman has in addition been a member of the even more select group (see *supra*, p. 165) known as the National Board (A. 131). Petitioners Stack (A. 72) and, apparently, Healey (see A. 44, 67–68) have attended National Committee "plenums", or formal meetings (A. 43). The evidence further shows that petitioner Schneiderman has been the California State Chairman for many years and that prior thereto, when the California organization was part of "District 13" (see *supra*, p. 165), he was, and had been since 1935, the "District Organizer" for that district (see *supra*, p. 60). Petitioner Yates has held the second-ranking State position (see *supra*, p. 166) of Organizational Secretary since 1950 (A. 114, 393) and petitioner Stack held that position before her (A. 238–239).

Yates testified at the trial that she, Schneiderman, and Stack were all members of the California State Committee in 1950 (A. 418), but refused to state which others of the petitioners were members of that body (A. 418–419). The evidence indicates, however, that, in addition to these three (A. 226–227, 229–231, 359–360, 376), petitioners Lima (A. 227, 230), Lambert (A. 226, 230, 359, 360, 376), Fox (A. 230–231, 366), Dobbs (A. 359, 368, 376), Healey (A. 231, 375), Carlson (A. 359), Richmond (A. 227, 230, 231, 367–368), and Connelly (A. 372–374) all used to attend meetings of the State Committee, at least from 1945 to 1949 (A. 225, 229, 374), including meetings held under conditions of strictest secrecy (A. 225, 232–234, 366, 369).[47]

Central control of all operations of the Party by its leaders is exercised by means of a Party principle known as "democratic centralism." This principle, in the words of petitioner Yates, is "the basic principle upon which the Communist Party organization is founded" (A. 388; see also Ex. 161). It is derived from the Communist Party of the Soviet Union, which insists upon the "strictest and truly iron discipline" (Ex. 1, p. 118). It requires that "all decisions of higher bodies shall be absolutely binding on lower bodies and on all Party members" (Ex. 28, p. 198). Thus, in California, all local units of the Party are controlled by the county leadership, which in turn is controlled by the State leadership, which in its turn is controlled by the national leadership (A. 9, 17, 26, 32–33, 36, 173, 196–197, 256–257, 320, 403; Ex. 161, p. 2; Ex. MF, pp. 9, 11; and see *supra*, pp. 164–167).

[47] For other evidence that the petitioners mentioned operated either partially or exclusively at the state level in California, see *supra*, pp. 11–69, where the evidence appertaining to each petitioner is separately collated.

One of the methods whereby the Party's leaders maintain this "iron discipline" and control over officials and rank-and-file members alike is the device of "purging" any member or official who fails rigidly to conform to the Party line as handed down from higher authority (A. 28–29, 53–55, 71, 147–151, 157–158, 201–202, 235–237, 310–313, 322, 328, 586–587; Ex. 153, pp. 19–20). Illustrative of this "purging" process, and of the inflexible obedience which the Party exacts of its members under penalty of expulsion, was the 1946 ouster from the Party of a group of San Francisco "left sectarian dissidents"[48] who had "challenged the leadership of the party" (A. 151) by failing to conform to the Party line and obey Party orders in a 1945–46 "machinist strike" in California (A. 150–153). At a Party meeting in May or June of 1946, "[t]he party leadership", represented at the meeting by petitioners Yates, Lima, Lambert, and Schneiderman, "accused the dissident group of not working with the party on the issues in the strike and of meeting separately in their own caucuses" (A. 151–152). "Charges were read against them" and each accused "got up and defended himself" (A. 152). One Verne Smith, a staff member of the Party newspaper *Daily People's World* (see *supra*, pp. 110–112), though "not on trial himself", also "defended these persons" as "good, sound party members and good trade unionists" (A. 152–153). Despite these pleas, however, not only were all the accused

[48] In the lexicon of the Party "left sectarians" are "forces within the Party who raise slogans which may sound very revolutionary, but are not in fact realizable at the given time" (Ex. 250, p. 3). As petitioner Schneiderman put it (see *supra*, pp. 64–65), "left sectarians" are "like the horse that was too far ahead of the cart"; since "revolution means tragedy, * * * violence and bloodshed", as he explained, it is not to be undertaken until the prospects of success are good.

themselves, one of whom was Lambert's own brother (A. 151, 153), expelled for their "anti-party activity" (A. 153); but Smith too was expelled, evidently for taking the others' part (A. 157–158). At a later meeting, moreover, held in September 1946 and attended by petitioner Yates (A. 147–148), charges were preferred against a Party member named Rosenbaum for "associating with [the] recently expelled members" (A. 148), and some weeks thereafter, at a meeting attended by petitioners Yates, Lambert, and Fox (A. 148–150), despite Rosenbaum's "fervent * * * defense of himself" as "a better Marxist than anyone present" and one who "had foreseen the Browder issue when the rest of the people present were still tied to Browder's coat tails" (A. 150), Rosenbaum too was expelled (A. 148, 159).[49] And still later, yet another Party member, witness Foard, was admonished by his club chairman for "associating with Rosenbaum," "an enemy of the party" (A. 158–159), and advised that the Party would "choose [his] friends and the persons with whom [he] was to associate" (A. 159).

THE CLANDESTINE NATURE OF THE PARTY

It has been pointed out that the Party had its actual origin, in 1919, as an "underground" organization (*supra*, p. 138)[50] and that later, in the 1930's,

[49] It was at this meeting that petitioner Fox (see *supra*, p. 41), in reply to Rosenbaum's taunting remarks that the Party "was still influenced by the Browder policies" and was "not a revolutionary party", angrily retorted that the Party "was a revolutionary party" and that "he wanted to see the overthrow of this lousy system just as much as anybody else present," but that the "time * * * for militant action * * * had not arrived yet" (A. 150).

[50] The so-called *Conditions of Affiliation to* [sic] *the Communist International*, as laid down by the Second World Con-

many of these very petitioners actively engaged in underground work, particularly in connection with activities of the Young Communist League (*supra*, pp. 27–28, 139–140). More recently, moreover, shortly after the close of World War II and the interlude of the Communist Political Association (see *supra*, pp. 144–145), the Party has taken major nationwide steps to expand and strengthen its underground operations and structure and to broaden the base of this phase of its activities, with the objective of insuring its survival as a vital revolutionary force even if it should lose some or all of its "top leadership" as a result of these leaders' being "arrest[ed]" by "the police" or "the Federal Bureau of Investigation" (A. 123).

The plan of operations, which National Chairman and alleged co-conspirator Foster brought back with him from Europe (A. 61–70, 76–77; Tr. 2254–2259, 2282–2289, 2324–2334), was described by witness Lautner, who participated in putting it into effect, as the "three-system" (A. 62). It was designed to provide a means of maintaining an effective "chain of command" within the Party with a maximum degree of secrecy (Tr. 2329). According to the plan, the Party members in a given state who were to be "integrated" (Tr. 2330–2331) into the underground

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gress of the Communist International (Ex. 514, p. 201), specifically required that all affiliated Parties have at least an underground component or "apparatus." They—*i. e.*, the *Conditions of Affiliation*—declared that because "the class struggle" in "nearly all countries in Europe and America" was "entering the state of civil war", "Communists can have no confidence in bourgeois legality. They must *everywhere* create a duplicate illegal apparatus", which "at the decisive moment" will be able to "help the party to perform its duty to the revolution" (as quoted in Lenin's *The Communist International* [Ex. 514], p. 202 [A. 566]; emphasis in the original).

structure were organized into seven "levels", starting at the top or "state level" and pyramiding downward (Tr. 2331). The highest level was to consist of three of the state's top-ranking Party officials. The next level was to consist of three groups of three lesser officials each, making nine in all, with each group under the command and supervision of one of the three top officials. The third level was to consist of nine groups of three still lower-ranking functionaries each, making 27 in all, with each of these groups similarly subject to the orders of one of the individuals on the next higher level. And so on down to the seventh level. (Tr. 2274, 2328–2332.) Each functionary at any given level, according to the plan, was to know one functionary on the next higher level, from whom he would receive his Party "instructions", and three functionaries on the next lower level, to whom he in turn would issue or relay instructions, but otherwise no individual was to have contact with or know the identities of any of the other members of the underground (Tr. 2330).

In addition to this "vertical structure", the Party leaders incorporated certain "horizontal aspects" into the underground organization (A. 64). These included such means of communication and related facilities as (A. 65; see also A. 66–70)—

> * * * the [preparation] of printing machines on all levels of the structure, the [preparation] of paper supply on the top levels * * *, * * * hiding places and contact places [for] party leaders * * *, drop places where party material can be dropped and picked up * * *,

[11] It was contemplated that only about ten percent of the Party's membership would compose its underground organization (A. 63).

> * * * documents and papers * * * to establish new identities for party leaders."[32]

The "underground system of communication" was also to include radio "relay stations", both "mobile" and "stationary", which were to be "powerful enough [to reach from] New York * * * to the West Coast" (A. 69–70).

In accordance with this national Party policy, the California Party in and after 1947 launched "a program of going underground" (A. 144, 159–161, 175–176, 331–332). California members were taught how the Party would operate on an underground basis (A. 122–123). In the event that "the Federal Bureau of Investigation" were to "arrest the top leadership", "the second leadership" was "to step in" so that there would be no "interruption of the party's program"; if "the second leadership" were arrested, "the third" was to take its place; and so on "down the line, they would still function as a revolutionary group to the fifth depth" (A. 123). Elaborate safeguards were taken to insure the secrecy of State Board meetings (A. 225–233). Even at the club level, elaborate "security" measures were adopted (A. 110, 159–160, 286–287, 318–319). Clubs were broken up into "squads," each consisting of "not more than five people and not less than three" (A. 318, 110, 286–287). Squad leaders would notify squad members of forthcom-

[32] That the program has had some success is indicated by the fact that alleged co-conspirator Robert Thompson, one of the four *Dennis* defendants who later became fugitives from justice, escaped apprehension for three years by making use of such underground paraphernalia as secret hiding places and false identification documents. It was Thompson, in fact, who was the national leader in charge of the underground planning (A. 61–65). It is noteworthy, moreover, that Thompson's hiding place was in California, petitioners' bailiwick. *United States* v. *Thompson*, 214 F. 2d 545 (C. A. 2), certiorari denied, 348 U. S. 841.

ing meetings only through personal contact if possible (A. 319). If it was necessary to make contact by telephone, veiled language was employed (A. 287). Roundabout routes were followed in going to meetings (A. 111). Members were admitted to meetings only after facing a panel and being identified (A. 92, 94, 144, 186–187, 192–194, 301–302, 303–304). All Party cards were destroyed in 1948 and thereafter no new ones were issued (A. 282–283, 301; Tr. 1537). Party activities were carried out through the use of codes (A. 232–233, 237, 287, 300). Following the demonstration of a dismountable type of mimeographing machine to petitioner Healey at the Party's national headquarters in New York, preparations were made to secure such machines in California (A. 67–68, 160–161).[53] At least one Party member, a witness in this case, was transferred from the open Party to the underground and trained to operate a printing press (A. 85–89) as part of a plan, he understood, "to move masses of people in time of crisis" (A. 88). And another Party member, likewise a witness, was excluded from "open" Party activity in 1950 and transferred to the underground because, as an employee of the North American Aviation Company, he was "associated with a key industry"[54] (A. 299–300).

THE PARTY POLICY OF CONCENTRATING ITS FORCES IN "KEY" OR "BASIC" INDUSTRIES

The Party believes and teaches (A. 57) that "to achieve the proletarian revolution and the dictatorship of the proletariat" (A. 60) it need "not necessarily [be] large * * * numerically" (A. 59); it is sufficient

[53] For the use to which such machines were intended to be put, see *supra*, pp. 172–173.

[54] For the Party's policy with respect to "key" or "basic" industries, its reasons therefor, and how such industries are defined, see *infra*, pp. 174–177.

that it be so situated as to be able "to influence the decisive sections of the American working class" (*ibid.*).[55] Because of this belief the Party has adopted what is known as its "concentration policy" (A. 601; Ex. 186, p. 3), *i. e.*, the policy of concentrating its recruitment and infiltration activities in the so-called "key" or "basic" industries. "Basic" industries are defined as—

> * * * those upon which the whole economic system depends. They include:
>
> 1. Those which produce material for production, like steel, mining, oil, chemicals.
>
> 2. Those which deliver material to the place of production or consumption, like railroad, trucking, marine, etc.
>
> 3. Those which produce power for running the wheels of industry, electric power plants, steam and hydro-electric plants, etc.[56]

The theory behind this "concentration policy" is the belief that the maintenance of "[s]trong Party organizations * * * in these basic industries" will at a critical juncture enable the Party, because of the

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[55] *Cf.* the *History of the Communist Party of the Soviet Union* (Ex. 28), p. 208 (A. 497), describing the first positions which the "Red Guards and revolutionary troops" occupied in the 1917 Bolshevik Revolution.

[56] J. Peters, *The Communist Party, A Manual on Organization* (Ex. 61), pp. 47–48 (A. 514–515). This work was published in this country in 1935 by the Party publishing house, Workers Library Publishers (*id.*, p. 2). Its author was identified at the *Hiss* trial as "the head of the whole underground of the American Communist Party" in the 1930's (Record, No. 320, Oct. Term, 1950, p. 233). In a preface to the work, for further details of which see *supra*, pp. 12–14, alleged co-conspirator Stachel wrote that it "fills a long-felt need" of the Party (Ex. 61, p. 3). Petitioner Yates, as noted *supra*, at p. 12, used to use it "as a textbook" in her lectures (A. 249).

"strategic importance [of these industries] in the economic system", to "deliver decisive blows" against the American capitalist system (*id.*, p. 48 [A. 515]).

In 1945, following the Communist Political Association period (see *supra*, pp. 144–145), the Party renewed and re-emphasized this concentration program (Ex. 55, pp. 805, 809, 812–815). "[A]ll strikes in basic industries must be Communist-led", said petitioner Healey at a Party meeting in 1946 (A. 133), and again, in 1947 (A. 305), she (A. 306)—

> * * * emphasized the importance of concentrating on the recruiting of * * * workers in the basic industries * * * such as the steel industry, the auto industry, the rubber industry, the oil industry, transportation, coal mining and so forth.

In 1948, a club chairman was told by the Party's Los Angeles County Committee that the National Committee "had chosen Steel, Auto, Mining, Electrical, Maritime and Railroad as the key industries for concentration" (A. 296). "[T]he county committee", she was further told, "had chosen * * * the local aircraft industries" for concentration by certain clubs, and "the oil industry" by others (*ibid.*). In San Francisco, the Party concentrated on the "transportation" industry among others (Tr. 5458–5459). Petitioner Stack told the Party's 1948 California State Convention that "[b]uilding the Party among industrial workers" was "basic" to the achievement of "our political objectives" (Ex. 186, p. 3). And in a 1948 report made to the Party's National Committee and published in its theoretical organ, *Political Affairs* (A. 599, 600), Henry Winston, an alleged co-conspirator and a *Dennis* defendant, said that the Party must be built in "key towns" and "key industries", such as "the packing, auto, railroad, and

maritime industries" (A. 651). "Our concentration policy", he said, "should run like a red thread through all phases of Party work" (*ibid.*).[5]

[5] Yates, the only petitioner to testify at the trial, admitted the existence of a Party policy whereby "certain industries in California have been selected * * * for purposes of concentration" (A. 389). For her statement of the "reasons * * * for the selection of these industries" "as [she] understand[s] it," see *ibid.* Contrast the reason for this policy as given in Peters' *Manual on Organization* (*supra*, pp. 175–176), a work which Yates used to use "as a textbook" (A. 249).

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